

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
THE IDAHO TRUST COMPANY, a Corporation,  
THE LEWISTON NATIONAL BANK, a Corpora-  
tion, THE CLEARWATER TIMBER COMPANY,  
a Corporation, ELIZABETH W. THATCHER,  
CURTIS THATCHER, ELIZABETH WHITE,  
EDNA P. KESTER, ELIZABETH KETTEN-  
BACH, MARTHA E. HALLETT, and KITTY  
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2211.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME IX.

(Pages 3201 to 3568 Inclusive.)

Appeals from the District Court of the United States for the  
District of Idaho, Central Division.



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(Testimony of George H. Kester.)

Q. Did you ever have a conversation with Mr. Colby regarding these matters at all? [2852—2522] A. No.

Q. On page 1690 of the record Robnett also testifies:

“Q. What were the entrymen to do? Was anything said about that?

“A. The entrymen were to go ahead and prove up and deed the claims over to Colby and Emory for \$200.00 each.”

Was there any such statement as that made?

A. No.

Q. I will ask you if in that conversation you stated to Mr. Colby: “Well, I will take it up with Mr. Kettenbach when he comes in and will let you know later.” Was there any such statement as that made?

A. No.

Q. Robnett says he heard a conversation between you and Mr. Colby, in which he says: “He says, ‘George, Fred Emory cruised out some timber last winter in 39-3, and we have located six parties on that timber with the understanding that we were to take care of them and pay their expenses and give them \$200.00, and then deed the claims over to us after proof.’” Mr. Robnett says he heard that conversation between you and Mr. Colby at that time. Was there any such conversation as that?

A. No, sir.

Q. On page 1692 of the record Robnett also testifies: “I think it was the next morning that Mr. Colby and Mr. Emory came into the office, and they talked

(Testimony of George H. Kester.)

the matter over, and Mr. Emory told him that he checked those claims over and he knew they were the best claims in that whole township that was subject to filing. And Mr. Kester told Mr. Colby that they would go ahead and furnish the money for the proof and take the claims under the same conditions that they had with the entrymen, to pay them \$200.00 for their right."

Did any such conversation as that take place?

A. No, sir.

Q. On page 1694 of the record Mr. Robnett also testified to a [2853—2523] conversation that he says took place in Mr. Kettenbach's private office between Mr. Emory and Mr. Colby, and Mr. Kettenbach and Mr. Kester—yourself—where you were having a talk, and that the names of the entrymen were given in that conversation, and that you was to furnish the expenses for these entrymen. Did anything of that kind occur? A. No, sir.

Q. Did you have any arrangement or understanding that you was to furnish the expenses, or anything of that kind? A. No, sir.

Q. Or to pay them \$100.00 apiece, or \$400.00 apiece, or any other sum? A. No, sir.

Q. On page 1695 of the record Robnett also testifies to the passing of a hundred dollar bill. Have you ever heard of that hundred dollar bill before?

A. Yes—several times.

Q. Will you state whether or not any such a thing as that ever occurred?

A. No, sir, it never occurred,

(Testimony of George H. Kester.)

Q. Was there ever a hundred dollar bill kept in the bank for the purpose of paying location fees?

A. No, sir.

Q. He testifies also that there was a hundred dollar bill kept in an envelope, and that it was kept there and passed out, and it was a new hundred dollar bill, given to Dwyer, and he would take it and pass it around to the entrymen and bring it back into the bank at night. Did anything of that kind ever occur? A. No, sir.

Q. Would it have been possible for that to occur without you knowing it?

A. No, sir. We sometimes kept thousand dollar bills and five hundred dollar bills in envelopes.  
[2854—2524]

Q. Did you keep a thousand dollar bill in an envelope?

A. Yes. We had several five hundred dollar bills there, and I think at different times we had two or three thousand dollar bills. We always kept those in an envelope, so that they would not get mixed up with the other bills and be given out by mistake.

Q. On pages 1695 and 1896 of the record Mr. Robnett testifies that there was a conversation in the bank regarding that hundred dollar bill, and either you or Mr. Kettenbach asked Bill Dwyer how he got along with that hundred dollar bill, and if he had paid a good many location fees with it, and Dwyer says, "Well, they paid a certain number, and it is back in the bank to-night."

Was there any such conversation as that took



(Testimony of George H. Kester.)

place in your presence, or by you, or in your hearing?     A. No, sir.

Q. Robnett also testified to a conversation with you concerning the reason why he dropped the Mary J. Harris contest, and he says: "One of the reasons I got out of it was that Mr. Kester told me he thought I had better drop it on account it was going to bring up a certain amount of notoriety, and Mr. O'Fallon was there, and it would create an investigation of the timber matters and would bring them into it, and he thought it was best to drop out, and I did so." Did you have any such conversation as that with Mr. Robnett?     A. No, sir.

Q. On page 1695 Robnett testifies concerning the claim of Carrie D. Maris: "Well, I made arrangements with Charlie Jansen to take her up close to Pierce and locate her on a claim, and she came back and I gave her the money for filing, and she filed, and I also gave her the money for final proof, and then I had her sign a mortgage to Mrs. Sullivan, for the money for the proof, \$400.00 or \$500.00, I have forgotten now which it was; then I had a deal on to sell the claim to Joe Molloy, but Mr. Kester said he wanted the claim, and I told him all right, and sold it to Mr. Kester for \$1600.00."

Now, did you have any conversation [2855—2525] with Robnett concerning the purchase of that claim before Miss Carrie D. Maris proved up?

A. No, sir; it was a long time after she proved up.

Q. He also testifies, in response to the following question:



(Testimony of George H. Kester.)

“Q. Did Mr. Kester know anything about the arrangements you had with Miss Maris?

“A. Yes, he knew all about that.

“Q. How do you know that?

“A. From conversations relative to the timber transactions.

“Q. And did you let him have that in accordance with your arrangements you had with him?

“A. Yes.”

Did any such a thing as that occur?

A. No, sir.

Q. You never knew anything about his arrangements with Carrie D. Maris? A. I never did.

Q. On pages 1699 and 1700 of the record Robnett testifies that he told you about his arrangements with Joel H. Benton and William B. Benton. State whether or not you ever had such a conversation with him.

A. Never. I never had any such conversation.

Q. On page 1718 Robnett testifies that he told you all about his arrangements with Robertson—Van V. Robertson. Did any such a thing as that occur? Did he ever tell you anything about his arrangements with Robertson? A. No, sir.

Q. And did you know anything about his arrangements with Robertson? A. No, sir.

Q. On page 1720 Robnett testifies that there was an arrangement between you and Kettenbach and Robnett for a division of the profits of [2856—2526] the Van Robertson claim. Was there any such arrangement or understanding or conversation between

(Testimony of George H. Kester.)

you?      A. No, sir.

Q. He testifies that there was an arrangement to divide the profits on the Max Gammon claim, after final proof. Was there any such arrangement as that?      A. No, sir.

Q. On page 1721 Robnett testifies that the defendants knew of the arrangement with Benton, and Joel H. Benton, and with an arrangement he had with Mary J. Harris, regarding the filing on a timber claim. State whether or not you had any knowledge of any such an arrangement, or any of his arrangements, with either of these parties, or if he ever told you anything about it?      A. No, sir.

Q. On page 1729 of the record Robnett testifies:

“Q. Now, did any of the defendants know of this arrangement you had with Mr. Soren Hansen?

“A. Yes. I told Mr. Kester and Mr. Kettenbach both, I told them all about it a number of different times, in regards to the conversation we had relative to timber matters.”

Did any such a thing as that occur?

A. No, sir.

Q. On page 1737 Mr. Robnett testifies:

“Q. Now, after your first conversation with Mr. Kettenbach and the conversation you had with Mr. Kester, shortly thereafter, that you have detailed relative to your arrangement for entering people on timber claims, did you have a number of timber claims cruised?      A. Yes, sir.

“Q. Do you know how many there were?

“A. There was about fifteen.

(Testimony of George H. Kester.)

“Q. And they were, according to your arrangement with Kester, not in the territory in which they were locating at that time, is that [2857—2527] correct?

“A. Yes, sir. Any claims I was to locate I always talked it over with them so as it wouldn't conflict.”

Was there any such arrangement as that made between you, or any such conversation as that?

A. No, sir.

Q. Was there any understanding or arrangement that Robnett should not enter your territory?

A. None whatever.

Q. I will ask you, Mr. Kester, if you knew anything about Robnett's arrangements for locating people on timber claims? A. Nothing whatever.

Q. And I will ask you if you ever objected to his taking his time from the bank and fooling with timber claims? A. I did.

Q. Did you talk to him about it?

A. I did, on several occasions.

Q. What occurred in relation to that?

A. Well, he said he had some sort of an arrangement with Knight and Benton, that they were simply locating people up there on lands for their location fee, and it wouldn't take any of his time, or take him away from his work.

Q. In relation to Robnett testifying that he was a confidential man in the bank, I will ask you if you ever advanced him beyond his position as book-keeper? A. No, sir.

Q. Did you advance other people over him?

(Testimony of George H. Kester.)

A. Yes, sir, on two different occasions.

Q. Who did you advance over him?

A. Mr. Bradbury. Mr. Bradbury was employed as Teller, and later Mr. Bradbury resigned. We employed Mr. Chapman, and he came into the bank and worked on the books for a certain time, and then we put him in [2858—2528] as Teller.

Q. Why was it you didn't advance Robnett?

A. Well, we didn't think he was capable to fill the position.

Q. Was Robnett anything more than a mechanical man? A. No.

Q. A bookkeeper? A. That's all.

Q. Robnett says, on page 1735: "Yes, sir. Any claims I was to locate I always talked it over with them so as it wouldn't conflict." Did Robnett ever talk his timber claims over with you, or in your presence? A. No, sir, in no respect whatever.

Q. I will ask you to state whether or not he took especial pains to keep you from knowing anything about his claims? A. He must have.

Q. Did you know anything about them?

A. No, sir.

Q. And did you have any interest in his lands, of any kind or nature? A. No, sir.

Q. Did he have any interest in your lands, of any kind or nature? A. No, sir.

Q. Now, Mr. Robnett testified over at Spokane, and possibly you heard him testify, that you told him there was an arrangement that he would have an interest in some of these lands; that you would do what

(Testimony of George H. Kester.)

was right with him in regard to lands that he had located people on and subsequently sold them to you or to Mr. Kettenbach, and some of them passed through Mrs. White, I believe. Did you ever have any such an arrangement as that, that Robnett was to have any interest in any of those lands at all?

A. No, sir. [2859—2529]

Q. On page 1738 Robnett testifies that "I was to go right ahead; they didn't care to enter that field just at that time, as it was second growth timber, and they wanted to use their entrymen in other territory, but later on, if they wanted to handle any of those things, they had the preference." That was in 39-3 and 39-2. Was there ever any such conversation as that? A. Never.

Q. On page 1739 Robnett testifies, in response to the following question:

"Q. Do you know Harvey J. Steffey?

"A. I do.

"Q. Did you ever have any directions from any of the officers of the Lewiston National Bank relative to honoring his checks? A. Yes, sir.

"Q. Well, state what it was.

"A. Why, Mr. Kester came to me and told me that all the checks of Mr. Steffey could be honored, as he was up in the timber doing some cruising, and also doing some locating for them, and at different times he was doing some buying, and his checks would be allowed, and whenever they came in they would be taken care of, and if there was an overdraft it was all right."



(Testimony of George H. Kester.)

Did you have any such conversation as that with Robnett?     A. No, sir.

Q. What were the circumstances relative to your allowing an overdraft of Mr. Steffey? There has been some evidence along that line, and Mr. Steffey gave some evidence to that effect.

A. Well, Mr. Steffey arranged on several different occasions for a loan or loans, and it may be that there were times when he did overdraw to a small amount, but it was properly taken care of by him executing a note for it, or putting up, or coming in and covering it from some source or other.

Q. Steffey at that time had considerable property, had he? [2860—2530]     A. Oh, yes.

Q. And he was always considered good for a loan?

A. Oh, yes.

Q. I will ask you, Mr. Kester, if you ever entered into any arrangement, conspiracy or combination with Mr. Dwyer, the defendant William Dwyer, whereby you should acquire timber lands together, or at all?     A. No, sir.

Q. Has Mr. Dwyer any interest in your timber lands at all?     A. No, sir.

Q. Have you any interest in the timber lands of Kittie E. Dwyer?     A. No, sir.

Q. Have you ever had any interest in her lands?

A. No, sir.

Q. And, as I understand you, you say you had no interest in the lands of Clarence W. Robnett, or that he acquired, other than those that you purchased from Robnett?     A. No, sir.

(Testimony of George H. Kester.)

Q. Have you any interest in the lands acquired by Elizabeth White?     A. No, sir.

Q. What business relations did Mr. Dwyer sustain to you and Mr. Kettenbach? What did he do for you, what class of work, and how did he do it?

A. Well, Mr. Dwyer was employed by us at different times in cruising and looking after timber, protecting it from fire, and at various times he purchased lands for us.

Q. And how was he paid?

A. On which he was paid a commission, and he was paid wages, and compensated for his work.

Q. He has been paid for all the work he ever did for you?     A. Yes, sir. [2861—2531]

Q. I will ask you, Mr. Kester, concerning the conveyance of these lands to the Idaho Trust Company, which you set forth in your answer was made to the Idaho Trust Company for the purpose of securing a loan, for money which you had borrowed from the Idaho Trust Company, and the renewal of certain notes that the Idaho Trust Company held. What amount of money do you owe the Idaho Trust Company, and for which these lands are held as security?

A. Why, it is something over \$50,000.00.

Q. I will ask you, Mr. Kester, if these notes all represent the amount of money received by you that they purport to represent?     A. Yes, sir.

Q. And there is nothing fictitious about any of the notes?     A. No, sir.

Q. As I understand you, the lands conveyed to the Idaho Trust Company is the James C. Evans land,

(Testimony of George H. Kester.)

the Lon E. Bishop land, the Frederick W. Newman land, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Guy L. Wilson, Daniel W. Greenburg, and David S. Bingham; and those were all conveyed to the Idaho Trust Company for the purpose of securing this loan—that with other lands?

A. Well, I know there was a vast amount of it deeded to the Idaho Trust Company, and I imagine you are reading from the complaint there?

Q. Yes.

A. In which the Idaho Trust Company is a party?

Q. Yes—406. A. Yes, sir.

Q. Whatever lands are described in the deed to the Idaho Trust Company? A. Yes.

Q. Is the lands that is held as security for the payment of this loan? A. Yes, sir.

Q. While the deed is absolute on its face, yet it is held by the Idaho Trust Company as security or in trust to secure that loan?

A. Yes, sir. [2862—2532]

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Kester, I understood you to say that you resigned from the Lewiston National Bank some time about the first of July, 1907? A. Yes, sir.

Q. Some time between the first and the tenth, wasn't it? It was not on the first day, was it? It was the 8th or 9th or 10th, wasn't it?

A. No; probably the 8th, if I remember right.

Q. And did Mr. William F. Kettenbach resign as president at the same time, the same day?



(Testimony of George H. Kester.)

A. Yes, sir.

Q. You referred to a conversation that you had with Mr. John Roos. Do you remember whether or not, as a part of that conversation, you told Mr. Roos what he could sell his claim for upon the Clearwater, the North Fork of the Clearwater?

A. I think I did.

Q. Do you remember how much you told him the claims on the North Fork were worth?

A. I think it was seven or eight hundred.

Q. Was the conversation to this effect: That "I told him [referring to Mr. Roos] that I knew of some vacant land but I didn't know how good it was, up on the Clearwater, on the North Fork, and he asked me about what it was worth, and I told him I didn't know, but I supposed those claims would sell for seven or eight hundred dollars, and he said he wanted to get a better claim than that?"

A. Yes, sir.

Q. Do you remember the occasion of your lending Mr. Cornell \$10.00?

A. Yes, sir.

Q. And it was that time that you loaned him the \$10.00 that you [2863—2533] had your first talk with him about taking up a timber claim?

A. Well, I rather think so.

Q. Now, do you remember exactly what was said about his taking up a timber claim? Do you remember whether you asked him if he wanted to take up a timber claim, or what was said?

A. Well, I may have asked him—I undoubtedly asked him if he had taken up a timber claim and something of that kind.

(Testimony of George H. Kester.)

Q. Well, the reason I ask is, there is a slight variance between the conversation in some small details relative to that particular point, and in your testimony at Boise you stated that "I asked him if he wanted to take up a timber claim," and in your testimony at the trial had at Moscow you said you asked him why he didn't take up a timber claim. Now do you remember which it was?

A. No, I don't remember.

Q. Now, do you remember how many times you saw Mr. Cornell that day, the day that you loaned him \$10.00?

A. No, I wouldn't be sure, Mr. Gordon.

Q. Wasn't it three or four times?

A. No, I don't think so.

Q. Now, you first saw him on the street and had a talk with him?

A. I don't think so, that day that he got the \$10.00, I don't think I did.

Q. As I understood, he was very poor looking and every indication was that he was in very poor circumstances financially?      A. Yes, sir.

Q. Now, do you remember whether this is the conversation that took place between you and Mr. Cornell the day you first spoke with him about taking up a timber claim: That he came into the bank on that day and wanted a loan of \$10.00, and that you told him you would be very glad to accommodate him, and that you talked along for several minutes, and he [2864—2534] told you that he was still looking for a position and wanted to know if you had been

(Testimony of George H. Kester.)

able to get him any work, and that you told him that you had made inquiry about town to that end, and that you had not found anything, and that you then asked him why he didn't take up a timber claim, and do you remember that conversation about as I have related it?

A. That may have been the way. I don't recall just the particular way it came up; I couldn't be positive about it.

Q. Well, I am reading from your testimony, Mr. Kester, that was given at the trial at Moscow, in case 1605. A. Yes.

Q. Now, do you remember testifying on that occasion that Cornell didn't seem to know anything about timber claims? A. Yes, sir.

Q. And that he asked you how much it would cost to file, and how much it would cost to be located, and matters to that effect? A. Yes, sir.

Q. And that you told him, after you had related that, that you thought Mr. Dwyer had some timber claims, that you would go to see Mr. Dwyer, is that correct? A. Well, something along that line.

Q. And that you did see Mr. Dwyer, and he told you that he had a claim, a homestead, that he would relinquish for \$200.00? A. Yes, sir.

Q. Now, do you remember that same day, after you had seen Mr. Dwyer, you went back to Mr. Cornell's lodgings and told him about that?

A. Well, it was either on the street or at his lodgings, I wouldn't be positive; it may have been at his lodgings.

(Testimony of George H. Kester.)

Q. I am reading 1707 of the record, in case 1605, and the question was, "Now, where did you find Mr. Cornell?" "Answer. I found him at [2865—2535] his lodgings, I believe." That is correct, is it?

A. Yes, sir.

Q. And when you told Mr. Cornell of that matter he told you he didn't have any money to take up a timber claim, did he not? A. Yes, sir.

Q. And you told him you would let him have the necessary funds for it?

A. Yes, after he had explained to me that his parents would be unable to help him in a transaction of that kind.

Q. He told you that he hadn't made good, and that he didn't like to take the matter up with them, besides the fact that his father had met with some reverses, is that correct?

A. Yes; well, he stated that, and then when he stated that he hadn't made good, why that indicated to me that it was simply in the way of accomplishing something on his own resources, and it occurred to me that if he had an opportunity to do something where it was tangible that that would help him, and then he stated that it was on account of the reverses his father had met with that he didn't think it would be possible to get any assistance from him for anything.

Q. Then you remember you went out and saw Mr. Dwyer and made arrangements for Dwyer to take him up the next day, and then went back and told Cornell to be at the train the next day, is that cor-

(Testimony of George H. Kester.)

rect?     A. Yes, sir.

Q. Now, when Cornell came to close the transaction by making a deed to this property, do you remember the conversation that took place, whether he came in alone or whether he came in with Mr. Dwyer to the bank?

A. I rather think that he came in with Mr. Dwyer, that is, I know that I saw Dwyer, and I am quite sure that he came in with Dwyer. [2866—2536]

Q. Now, do you know what Cornell said then at that time?

A. Yes, he said that he had been talking with Mr. Dwyer, and that Mr. Dwyer had given him an idea as to the fair valuation on the claim, and that if he could sell it he would like to sell it.

Q. Do you remember what the valuation was?

A. I think it was within about \$600.00 or \$650.00.

Q. And is that the price that you paid for it?

A. I think so.

Q. I understood you had advanced him \$400.00 and some odd dollars for the final proof, had you not?

A. Yes, sir.

Q. Had you advanced him anything else?

A. I don't know whether he had paid me little amounts that he had borrowed from me or not.

Q. That was all taken up at the same time, was it not?     A. Yes, sir.

Q. Mr. Cornell came down to the bank to get the money for his final proof, did he not?

A. Yes, sir.

Q. And how long after this conversation you say



(Testimony of George H. Kester.)

you had at the bank with Mr. Cornell and Mr. Dwyer was it that he made the deed—the same day or the next day?

A. That is, you mean where the consideration was agreed upon?

Q. Yes. A. Oh, right away.

Q. Now, Mr. Kester, you didn't know anything about the valuation of timber at that time, did you?

A. Well, only in an incidental way.

Q. And you relied upon Mr. Dwyer for the estimates and the valuation to be put upon the timber claims that you had anything to do with, did you not? [2867—2537]

A. Well, in many cases, most cases.

Q. Now, wasn't there some arrangement you had with Mr. Dwyer, you and Mr. Kettenbach and Mr. Dwyer, whereby Mr. Dwyer was to have a third interest in some property that you were to acquire?

A. Yes, in some State lands, that is, the timber on some State lands. There was an arrangement on a certain basis, and that was on the basis that if the land—if we were able to purchase the land on the appraised value, at which price all the State land up to that time had been sold, that he was to have a third interest in it, but in the event that the land would sell for more than—if we were to buy the timber for a greater amount than the estimated value, he was simply to have compensation for his time and expenses.

Q. Now, in the management of this timber business, so far as it went, you had the active manage-

(Testimony of George H. Kester.)

ment of it, did you not?

A. Well, I suppose I did.

Q. Do you remember, reading at page 1739 of the record, 1605, this question was asked you by your attorney: "Who had the active business arrangement of these purchases—you or Mr. Kester?" "Answer. I had." Was that the way you understood it?

A. Yes, in that form of the question, yes.

Q. And you bought all your lands on the information you obtained from Mr. Dwyer, is that correct?

A. Well, in the most of cases; there were some cases that we bought land on other estimates.

Q. Now, Mr. Dwyer at times worked for you for a salary and sometimes on commission, did he not?

A. Yes, sir.

Q. And what was his commission on—

A. Five per cent. [2868—2538]

Q. Did Mr. Dwyer ever have a bank account at your bank in his own name?

A. No, not in his own name.

Q. You used the expression on your direct examination that you paid the purchase price. What did you mean by that? You mean the price you had arranged with the parties to purchase the land for?

A. Well, the price that had been agreed upon for the purchase of the land at the time that the lands were sold.

Q. Now, in purchasing these various tracts of land how did you pay for them—by check or in cash?

A. Well, in most all ways. In many cases the

(Testimony of George H. Kester.)

deeds came into the bank awaiting an estimate, or awaiting some information regarding the claims, and then again the parties would bring the deeds in and get their money for their claims right there in cash. Then in other cases checks were issued, and most always in purchasing timber claims there is what is known as initial payment, a sort of an earnest payment that is made to bind the bargain. Then, of course, there is the making of the deeds and abstracts, that follows later, and the final payment is made when the deal is closed.

Q. In the Steffey entries did you pay for them by check?

A. It may be that some of them were paid by check, but I think, with the exception of perhaps one or two instances, that the money was paid to Steffey.

Q. Steffey had gotten the money from you or the bank to loan these people for final proof, had he not?

A. Well, I suppose he did in many cases; he came and arranged for loans at different times, and took them up at different times.

Q. Now, about the circle K. checks that they bought property with—

Mr. TANNAHILL.—We object to that as not proper cross-examination, and irrelevant and immaterial. [2869—2539]

Mr. GORDON.—Q. Were those checks kept at all, or do you know what property was purchased with them?

Mr. TANNAHILL.—The same objection. Go



(Testimony of George H. Kester.)

ahead and answer.

A. I will say about the circle K. checks: Those were really as a memorandum or a sight evidence of indebtedness incurred by Mr. Dwyer and in the principal sum for expenses or for these initial payments on lands that he might go out and contract for.

Q. They were on the regular bank check, though?

A. Yes, they were on the bank check, and signed by Mr. Dwyer, and those checks came into the bank and were taken up by Mr. Kettenbach and myself or charged into our Kester and Kettenbach account.

Q. And then destroyed?

A. I don't know that they have been destroyed.

Q. You haven't anything to identify them, as to what property they were used in purchasing though, have you?

A. No, there wouldn't be anything in that connection, I don't think. In some instances I dare say they were marked, but that was incidental, and they were mostly small checks that were given for expenses and these initial payments. When the deals were usually closed, they were closed by the parties coming in and delivering their papers or turning over abstracts, or something of that kind, when we finally completed the purchase.

Q. You have met one Rowland A. Lambdin, have you?     A. Yes, sir.

Q. How long had you known him before he took up a timber claim?     A. Well, not very long.

Q. Now, do you remember him coming to the bank to see you about taking up a timber claim, before

(Testimony of George H. Kester.)

he had located on one? [2870—2540]

A. Yes, I think he did come in and inquire of me.

Q. Now, do you remember what he said?

A. No, I don't remember exactly now what he said, but it comes to me, since you mention it, that he came in and inquired about a timber claim. Of course, that wasn't an unusual thing for people to do, and, as I remember it, I referred him to Mr. Dwyer for any information that he might be able to get in getting a claim.

Q. Do you remember whether this is what happened? That he came into the bank one day and said to you that he understood that you had a timber claim and that he wanted to locate on one.

A. Yes, I expect he did.

Q. And that you sent him to see Mr. Dwyer?

A. I expect that is what I would do. I don't just remember that very clearly.

Q. Do you remember later Mr. Dwyer coming to you to see about getting the money for Lambdin to prove up on his claim? A. Yes, I believe I do.

Q. And that you let Lambdin have the money to make his proof?

A. Yes; I think that Mr. Dwyer became responsible for that as well.

Q. He and Lambdin both came together to the bank the day they got the money though?

A. I think so, yes, sir.

Q. Do you remember whether he gave a note?

A. Yes, sir.

Q. Now, who negotiated the sale of that property

(Testimony of George H. Kester.)

to you, Mr. Kester?

A. Well, sir, I don't remember whether it was Mr. Lambdin or whether it was Mr. Dwyer.

Q. Do you know where it was? Was it settled in the bank? [2871—2541]

A. Yes, I think very likely.

Q. Do you know how much you paid for that claim? A. The Rowland Lambdin claim?

Q. Yes. A. No, I do not; I don't remember.

Q. Wasn't it about \$600.00, between six and seven hundred? A. Well, sir, I couldn't say.

Q. You didn't pay any more for them then than that about that time, did you?

A. No, I didn't pay any more than I had to, because we didn't know what we would be able to get out of it.

Q. Now, do you remember Shaeffer coming to you before he filed on a claim and telling you that he didn't have the money to take up a claim and that you told him you would assist him in taking up a claim? A. Yes, sir.

Q. That was in the bank, was it?

A. Why, I presume it was.

Q. And you did give him the money with which to make proof and afterwards purchased his claim?

A. Yes, sir.

Q. And you let the O'Keefe entrymen have the money with which to make proof? A. No, sir.

Q. Did you let O'Keefe have it?

A. Well, I loaned Mr. O'Keefe some money.

Q. Wasn't it for these entrymen to make their

(Testimony of George H. Kester.)

proof? A. I presume it was.

Q. Now, the claims that Mr. Kettenbach had and the claims that were taken in the name of Kester and Kettenbach, did you each have an interest in all of them? [2872—2542]

A. The claims that stand in the name of Kester and Kettenbach belong to Mr. Kettenbach and myself. The claims that stand in his name, I think in almost every instance, are his own property. And the claims that stand in my name are my own property.

Q. Do you know of any that stand in your name that Mr. Kettenbach has an interest in?

A. No, sir.

Q. Do you know of any that stand in his name that you have an interest in?

A. Well, now, it is possible that there might be some, but I don't think there are.

Q. Now, do you remember the names of the entrymen from whom you bought the claims in the Potlatch country?

A. I know them perhaps by the name under which—the name of the party that proved up on the claim.

Q. That is what I mean.

A. Well, there is the Cornell claim that was located in the Potlatch, and the Shaeffer claim, and the Lambdin claim.

Q. Were they the first claims that you purchased?

A. No.

Q. Were they of the first that you purchased?

(Testimony of George H. Kester.)

A. Well, they were perhaps purchased in the same year.

Q. The reason I asked was, in your examination in chief you said you and Kettenbach began to purchase timber claims in the Potlatch country and on the St. Maries.

A. Where I first began—the very first timber that I became interested in was an interest I acquired in some scrip lands in the Potlatch that were located by Sam. McFarland and myself; that is the first interest that I had in any timber land up there.

Q. Now, did you buy the Charles Smith and the Charles Dent claims? [2873—2543]

A. Charles Smith and Charles Dent? I know that we own those claims; I don't think that I purchased them, although it may be that I did.

Q. Now, the Evans, the Bishop and the Newman claims, did you purchase them? A. Yes, sir.

Q. Did you negotiate the purchase of them yourself?

A. No, I had nothing to do with the negotiations.

Q. That was conducted by whom?

A. Conducted by Mr. Kettenbach.

Q. Now, this Van Robertson claim, I understood you to say that he had given a note and couldn't pay it, and after some urging to pay the note, why he said that he would make a deed if you would cancel his note, is that correct? A. Yes, sir.

Q. And you did that? A. Yes, sir.

Q. Now, with reference to these Evans, Bishop and Newman claims, you say they were purchased



(Testimony of George H. Kester.)

after Emory had reported to Mr. Kettenbach as to the amount of timber on them and the value of them?

A. Yes, sir.

Q. Now, do you remember of Mr. Kettenbach discussing with you the propriety of advancing the money to these entrymen to make their proof, a day or two before that?

A. I rather think that Mr. Kettenbach intended to make the loan himself out of his own funds, and I don't remember that I was consulted about the matter of loaning to the entrymen; I don't remember about that, however; I may have been.

Q. As I understood the transaction, the bank held a note of [2874—2544] Drury M. Gammon for \$400.00, and urged him some little, and he told you that if you would cancel the note that he would make you a deed, is that correct?

A. Yes; it was something over \$400.00. I rather think it was about \$450.00, the face of the note.

Q. And he had conveyed it to Robnett, or Robnett had a deed for it, as I understand?

A. Well, it developed later that Robnett had a deed. I didn't know that Robnett had a deed to the claim when I was holding it. The fact that he came in and paid the interest on the note, I supposed that he had the title to it.

Q. Robnett made the deed right over to you?

A. Robnett made the deed when the matter was closed up for Gammon.

Q. Gammon didn't get any extra money out of it though, did he? A. No, sir.

(Testimony of George H. Kester.)

Q. Just got the amount of the note and interest?

A. No, sir.

Q. The note and interest was cancelled and—

A. The note was charged up to the timber account for the amount of the note and the interest on it.

Q. I mean that wasn't any of Gammon's affair?

A. No.

Q. Do you remember letting Mrs. Frances A. Justice have the money with which to make proof?

A. I don't remember it, but I guess I did, or let Mr. Dwyer have it.

Q. How is that?

A. I say I don't remember of it, but I presume that I did, either let Mrs. Justice or Mr. Dwyer have the money for her. [2875—2545]

Q. Did you also let D. W. Greenberg have the money for his final proof?

A. I don't remember that I did; I know that I do remember that Mr. Greenberg borrowed money from us there at the bank on several occasions.

Q. Did you let William E. Helkenberg have the money with which to make proof?

A. I don't remember.

Q. Do you remember whether or not you held the note of John H. Little for the amount that was advanced him to make his final proof?

A. I never knew anything about the Little transaction, Mr. Gordon.

Q. Never had a talk with Little about it, never wrote to Little about it? A. No, sir.

Q. With whom did you negotiate for the purchase

(Testimony of George H. Kester.)

of the Fred Justice claim?

A. That, I think, was purchased from Mr. Dwyer.

Q. Now, tell us how far the desk at which Mr. Robnett did his bookkeeping was from the end of the little room where Mr. Kettenbach had his office?

A. Well, I should think it would be or was somewhere between sixteen and twenty feet, depending, of course—I think perhaps from Mr. Kettenbach's office to the corner, the nearest corner of his desk, would be about sixteen feet, from that to about twenty feet.

Q. Then there was another desk that Mr. Robnett worked on at times that was right next to your desk, was there not?

A. Yes, room for a chair and passageway.

Q. And your desk was right against the partition of the Kettenbach office? [2876—2546]

A. Yes, sir.

Q. And that would make the desk that I have referred to about four or five or six feet from Mr. Kettenbach's office, would it not?

A. Well, from the framework it would probably be about that; but from the door it would be further.

Q. How big was Mr. Kettenbach's office—a little room ten or twelve feet—

A. I think about nine feet square.

Q. Now, from 1900 to 1907 were not you and Mr. Robnett on very intimate terms?

A. Well, I should say we were, in a sense. Of course, he was employed in the bank there for many years, and we supposed he was honest, but as far as



(Testimony of George H. Kester.)

socially is concerned, I can't say that we were on such terms as that. He was simply a subordinate in the bank, and had nothing whatever to do with any of our business matters at any time.

Q. How many claims did you purchase, or you and Mr. Kettenbach purchase, through Robnett?

A. Well, the only claims that we purchased from Mr. Robnett, really the only direct purchase that we made from Mr. Robnett was the Dell. Maris claim.

Q. Who negotiated for the other sixteen or seventeen claims that you got that he was interested in?

A. Well, I am interested in the Dell. Maris claim and the Hyde and Morrison claims. All the other claims that Mr. Robnett sold or was in any way instrumental in selling belong to Mr. Kettenbach. I have no interest in them whatever. And these two claims of Hyde and Morrison were purchased from these men; Robnett simply came with these men and the matter was closed with these men and Mr. Robnett.

Q. The transactions relative to them were conducted, most of them, in the bank, were they not?  
[2877—2547] A. O, yes, entirely.

Q. And you say that those that you didn't—outside of those, besides those three you have named that were purchased from or through Robnett, that he came with the others and brought them in to you?

A. That is, Mr. Hyde and Mr. Morrison, he brought them in the first that I knew about it, and when he came in with them, and we bought them on

(Testimony of George H. Kester.)

the basis of Mr. Smith's estimate. The Dell. Maris claim I bought from Mr. Robnett myself directly, but the Little claim, the Longs, and all that bunch, were purchased directly from these people by Mr. Kettenbach, as far as I ever knew; while it appears from Robnett's testimony that I heard in Spokane that he had some little to do about bringing about the culmination of the sale. But those matters belong to Mr. Kettenbach and I have no interest in them.

Q. Now, which is the more important office in a bank of that kind, the teller or the bookkeeper?

A. Well, it is always supposed that the teller's position is, in a small bank, more important, but, of course, in a very large bank the bookkeeper's position is considered more important, that is, the head bookkeeper. Of course, Mr. Robnett was simply keeping the books there, just as any ordinary bookkeeper in any large bank; it didn't require any head bookkeeper or anything of that kind.

Q. He kept them all at one time, didn't he?

A. Oh, he kept all the books at times and the most of the time. When Mr. Chapman came into the bank we put him on the books for him to get familiar with the names of the depositors and the general running of the bank, before we advanced him to teller.

Q. Now, when you made him teller, did you pay him as much salary as you were paying Mr. Robnett?

A. I don't think there was very much difference to begin with in their salary. A little later we kept advancing all in the bank as fast [2878—2548] as we felt that we could.

(Testimony of George H. Kester.)

Q. The teller never did get any more than Robnett was paid, did he?

A. I think he always did; he may not at first.

Q. Do you remember what salary they paid Bradbury? A. No, I do not, now.

Q. Was he working for \$75.00 a month when Robnett was drawing \$90.00?

A. Oh, no; it might have been *vice versa*.

Q. But there was very little difference between any of the salaries? A. No, not such a great difference.

Q. Five or ten dollars' difference, ordinarily?

A. I suppose about that.

Q. You and Mr. William F. Kettenbach were in partnership with the timber claims, were you not?

A. Well, we never considered it such. It was a joint interest. There wasn't a partnership, never was considered by us—we never considered that we were partners. I dare say in the ordinary term of the expression we would be considered partners, on account of our close association, but as far as our interests were concerned there, they were joint interests; he had paid his share of it, and I had paid my share of the cost of it.

Q. But when the Cornell and Lambdin and Shaef-fer claims were bought you and Mr. Kettenbach were purchasing timber claims under this arrangement, this joint interest, were you not? A. Yes.

Q. And that is the way you started into it, was it not? I understood you to say that you had some funds that you and Mr. Kettenbach thought you would like to invest in timber?

(Testimony of George H. Kester.)

A. Yes, into these matters under consideration.

Q. How long has Mrs. Martha E. Hallett's husband been dead? [2879—2549]

A. I think about seventeen years.

Q. Did I understand you to say that you personally closed the transaction with Mr. Greenberg for his timber claim? A. I expect I did.

Q. Do you know where it was? Was that in the bank? A. I expect so.

Q. Did you close the transaction for the O'Keefe entries? I mean, was it done by you or by Mr. Kettenbach? A. By me, I think.

Q. And that was at the bank, also?

A. I think so.

Q. You don't remember of settling for any timber claims anywhere else, do you?

A. I don't, just now.

Q. Now, in what part of the bank were these agreements made—through the window or in the directors' room, or in Mr. Kettenbach's office?

A. Well, usually at my window, that is, the cashier's window, that is, where the settlements were made in the bank.

Q. Do you remember whether or not Hiram F. Lewis came to you and asked you to loan him sufficient money for his brother Edward M. to make his final proof? A. I think he did.

Q. Do you know Melvern C. Scott? A. Yes, sir.

Q. And you remember purchasing his timber claim, do you not?

A. I remember that we purchased his claim. I

(Testimony of George H. Kester.)

don't just remember how we purchased it, whether I purchased it direct, or whether I purchased it through Mr. Dwyer; I couldn't say.

Mr. GORDON.—That is all. [2880—2550]

Redirect Examination.

(By Mr. TANNAHILL.)

Q. Mr. Kester, did you tell any officer or director of the Idaho Trust Company anything about the manner in which you acquired title to these timber lands? A. No, sir.

Q. Did they have any notice or knowledge of the manner in which you purchased or acquired them, that you know of?

Mr. GORDON.—Objected to on the ground that it is a mere matter of opinion. How can he know what they knew?

Mr. TANNAHILL.—I am asking him as to his knowledge about that.

A. No, sir.

Q. One matter I didn't understand you very clearly on, Mr. Kester, about your conversation with Cornell. You stated that you thought possibly at one time you went to his lodgings. Now, was that before or after you talked with Mr. Dwyer about locating Cornell on a claim?

A. As I remember, that was after I had talked to Mr. Dwyer.

Q. After you had talked to Mr. Dwyer?

A. Yes, sir.

Q. And then, as I understand you, Cornell wanted to know when he could go to the claim, go on the



(Testimony of George H. Kester.)

claim, asked you something about when he should go up to the timber?      A. Yes.

Q. And then did you go and see Mr. Dwyer again?

A. No, I had already arranged with Mr. Dwyer that he would be at the train and I would have Cornell there, or I would notify Cornell that he could go that day—the next day.

Q. Then you didn't see Mr. Dwyer after you talked with Cornell and told him that Dwyer could locate him on a claim?      [2881—2551]

A. No, I don't think so.

Mr. TANNAHILL.—That is all.

At this time an adjournment was taken until Monday, October 17, 1910, at ten o'clock A. M.      [2882—2552]

On Monday, the 17th day of October, 1910, at ten o'clock A. M., the hearing was resumed, in the City Council Chamber, in Lewiston, Idaho.

**[Testimony of J. M. Bradbury, for Defendants.]**

J. M. BRADBURY, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?      A. J. W. Bradbury.

Q. Where do you live, Mr. Bradbury?

A. Kendrick, Idaho.

Q. What is your business?      A. Banker.

Q. How long have you been engaged in the banking business?      A. For myself?

Q. Yes.      A. Since December 1, 1904.



(Testimony of J. M. Bradbury.)

Q. What experience have you had in the banking business, either for yourself or as an employee of a bank?

A. Well, I have been working in banks and for myself ever since 1893.

Q. And where have you worked?

A. Palouse City, Washington, and Lewiston, Idaho.

Q. Was you ever connected with the Lewiston National Bank?     A. Yes, sir.

Q. During what periods of time?

A. From 1899 until 1904. [2883—2553]

Q. And in what capacity was you employed with the bank?     A. Teller.

Q. And you held that position during the entire time, did you?     A. Yes, sir.

Q. Are you acquainted with Clarence W. Robnett?

A. Yes, sir.

Q. Was he an employee of the bank during that time?     A. Yes, sir.

Q. What position did he hold?     A. Bookkeeper.

Q. Are you acquainted with George H. Kester and William F. Kettenbach?     A. Yes, sir.

Q. Were they connected with the bank during that time?     A. Yes, sir.

Q. And what positions did they hold?

A. Mr. W. F. Kettenbach was president; and Mr. George H. Kester was cashier.

Q. I will ask you, Mr. Bradbury, if you remember where Mr. W. F. Kettenbach's private office was during that time?     A. Yes, sir.

(Testimony of J. M. Bradbury.)

Q. In what part of the bank was it?

A. It would be in the southeast corner of the banking-room. If I am not mistaken, that is north? (Indicating.)

Q. Yes, that's right. A. Yes.

Q. I asked you this morning, Mr. Bradbury, if you would prepare a plat or a drawing of this bank, showing Mr. Kettenbach's private office, showing the flat-top desk and the interior of the bank, and showing Mr. Robnett's desk—the bookkeeper's desk, where Mr. Robnett worked. Have you made that drawing?

A. Yes. [2884—2554]

Q. Have you it with you? A. Yes, sir.

Q. Will you let me have it, please? (The witness handed said plat to Mr. Tannahill.) I will ask you, Mr. Bradbury, if this paper which you hand me contains a substantially correct drawing of the interior of the Lewiston National Bank, as it was at the time you worked there?

A. With the exception of the directors' room. This is a drawing I made just simply of the banking-room or office. The directors' room is not in there.

Q. The directors' room would be farther north?

A. Yes, sir.

Mr. TANNAHILL.—We offer the diagram in evidence, and ask that it be marked the defendants' proper exhibit.

Mr. GORDON.—We object to it as incompetent, irrelevant and immaterial.

Said plat or drawing was thereupon marked by the Reporter as Defendants' Exhibit B-1.

(Testimony of J. M. Bradbury.)

Mr. TANNAHILL.—Q. I will ask you, Mr. Bradbury, to endorse on this plat about the number of feet it is from William F. Kettenbach's private office to the flat-top desk; also from the flat-top desk to the bookkeeper's desk.

A. Well, I don't know whether I can do that or not. I think that building is about 50 feet. (Figuring on back of plat.) Well, am I supposed to give this accurately?

Q. Oh, no; just substantially—as near as you can. (The witness marked said plat as requested.)

Q. Now, according to your best judgment and recollection, about what would the number of feet be to the flat-top desk?

A. To the flat-top desk would be from 10 to 15 feet.

Q. Then from the nearest—from the northwest corner of W. F. [2885—2555] Kettenbach's private office to the bookkeeper's desk it would be from 20 to 25 feet? A. Yes.

Q. And from the door of W. F. Kettenbach's private office to the bookkeeper's desk it would be from 25 to 30 feet? A. Yes, sir.

Q. I will ask you, Mr. Bradbury, if an ordinary conversation can be heard from the interior of William F. Kettenbach's private office to this flat-top desk in the interior of the building?

Mr. GORDON.—Objected to as calling for a conclusion of the witness.

Mr. TANNAHILL.—Answer the question, Mr. Bradbury.

A. Under some circumstances it could.

(Testimony of J. M. Bradbury.)

Q. Under what circumstances could it be heard?

A. If a man was doing nothing, and nothing else going on in the bank.

Q. I will ask you if an ordinary conversation could be heard from the interior of William F. Kettenbach's private office to the bookkeeper's desk, where Robnett worked?

A. Under the same circumstances, it could.

Q. Now, I will ask you if you ever overheard a conversation from the interior of William F. Kettenbach's private office to where you worked in the bank?

A. No, sir.

Q. I will ask you if you ever overheard any discussion of timber matters between Mr. Kettenbach and Mr. Kester in the interior of the bank, or in Kettenbach's private office?

A. No, sir.

Q. Mr. Bradbury, Mr. Robnett testified to there being a hundred dollar bill in the till or cash drawer, or in with the cash at the teller's window, that was used by Mr. Dwyer, and for the payment of a location fee, and that it was kept in an envelope, and that it would be [2886—2556] passed out to Mr. Dwyer and passed around to different entrymen and would be returned to the bank and placed in the envelope and kept there. Was there ever such a hundred dollar bill kept in the bank in that way?

Mr. GORDON.—Objected to as leading and suggestive.

The SPECIAL EXAMINER.—Answer the question.

WITNESS.—Not while I was working there.

(Testimony of J. M. Bradbury.)

Mr. TANNAHILL.—Q. Not while you was there?

A. No, sir.

Q. Do you have any recollection of a bill of large denomination being kept there in an envelope for any purpose? A. Yes, sir.

Q. What was that? A. A thousand dollar bill.

Q. And for what purpose was that kept?

A. Well, for my own purposes—for my own protection.

Q. And what was that?

A. Simply to keep me from paying it out for small bills. They are very unusual—thousand dollar bills.

Cross-examination.

(By Mr GORDON.)

Q. Mr. Bradbury, this flat-top desk that is marked here, and to which you have referred, was the desk upon which the man making the remittances at times would sit, was it not? A. Yes, sir.

Q. Now, was this desk always in the same position, during the time you were in the office?

A. Virtually, yes.

Q. And now you have a desk marked “George H. Kester” that is right up against the wall adjoining on the side of W. F. Kettenbach’s office?

A. Yes, sir. [2887—2557]

Q. And that desk, the back of it was to Kettenbach’s office? A. Yes, sir.

Q. And when Kester sat there, he faced into Kettenbach’s office? A. Yes, sir.

Q. Now, at one time, wasn’t this flat-top desk just behind Kettenbach’s desk—or Kester’s desk—three



(Testimony of J. M. Bradbury.)

or four feet between, where you could pass between the chair of Mr. Kester and the chair occupied by a person sitting at the flat-top desk?

A. Well, I can state almost positively that never since Mr. Kester's desk was in there was the flat-top desk away from the position—within a few feet, or inches virtually, of where it is drawn there.

Q. I understood you to say that when it was quiet in the bank that you could hear a conversation that was being carried on in Mr. Kettenbach's office, at the bookkeeper's desk; is that correct?

A. Under some conditions.

Q. Under the conditions that it was quiet in the bank, I understood you to say—that there wasn't any noise in the bank?      A. Yes, sir.

Q. Do you remember the month that you left the Lewiston National Bank?      A. Yes, sir.

Q. What month was it?

A. The last of June or first of July.

Q. 1904?      A. Yes, sir.

Q. This plat that you have drawn, it is just from memory?      A. Yes, sir.

Q. And the dimensions that you have given—

A. — are just a guess.

Q. And as you can remember them?

A. Yes, sir,

Q. As a guess? [2888—2558]      A. Yes, sir.

Q. Now, you say that you have been in the banking business in your own interest since December, 1904?

A. Yes, sir.

Q. But during all that time you haven't conducted



(Testimony of J. M. Bradbury.)

your own bank for yourself, have you?

A. I have been over it, yes, sir.

Q. Well, I mean you have worked at other places yourself? A. Yes, sir.

Q. You retired from the Lewiston National Bank, and where were you employed after that?

A. Until I went into the Kendrick bank?

Q. Yes. A. I wasn't employed.

Q. Well, did you go immediately from the Lewiston National Bank into the Kendrick bank?

A. Counting out the time from July 1st until December, 1904.

Q. You didn't do anything during that time?

A. Yes, sir.

Q. And you were not employed during that period?

A. No, sir.

Q. Now, have you worked in any other bank besides the Kendrick bank between December 1st, 1904, and the present time? A. Yes, sir.

Q. Where? A. The Moscow State Bank.

Q. And when did you enter that bank?

A. Well, if I am not mistaken it was the 15th of July, 1907. It was within a few days of that.

Q. And you became employed at that Moscow bank in July, 1907, did I understand?

A. Yes, sir. [2889—2559]

Q. And you remained there how long?

A. Until the first of 1910.

Q. In what capacity were you employed?

A. Cashier.

Q. And what was the salary?

(Testimony of J. M. Bradbury.)

A. \$250.00, a month.

Q. All the time? A. Yes, sir.

Q. Now, this bank that you referred to as your bank, are you the sole owner of that bank?

A. No, sir.

Q. And what is the capital stock of that bank?

A. \$25,000.00.

Q. And how much stock do you own?

Mr. TANNAHILL.—We object to that as immaterial.

Mr. GORDON.—Q. Approximately? I don't want to appear to be prying. I have a reason for asking you, Mr. Bradbury.

A. Well, I think I will decline to answer, unless the Judge instructs me to. I think that is my private business.

The SPECIAL EXAMINER.—He declines to answer.

Mr. GORDON.—Q. Well, I will ask you if you own 1,000 dollars' worth of stock in that bank, Mr. Bradbury? A. I decline to answer that.

Q. Well, why is it that you call that bank your bank? A. I decline to answer that.

Q. Now, you say there was a thousand dollar bill that was kept in an envelope for your own protection, so that you would not pass it out for notes of a smaller denomination. Was there more than one thousand dollar note kept in that envelope?

A. At the same time? [2890—2560]

Q. Yes. A. No, sir.

Q. And were there any five hundred dollar bills

(Testimony of J. M. Bradbury.)

or notes kept in an envelope?

A. Not that I remember of.

Q. Mr. Bradbury, were you interested in the timber business during the time you were in the Lewiston National Bank?

Mr. TANNAHILL.—We object to that as immaterial.

The SPECIAL EXAMINER.—You can answer it yes or no, Mr. Bradbury.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And were you in any way interested with Mr. Robnett in any timber?

Mr. TANNAHILL.—I object to that as immaterial.

WITNESS.—I bought one or two mortgages of his.

Mr. GORDON.—Q. Do you mean that you loaned the money on which the mortgage was secured, or did you buy it after the loan had been made?

A. I think in one or two instances that I loaned him money in which the mortgage was made. The mortgage was taken in Mr. Robnett's name, and afterwards transferred to me. I think in one instance that I bought the mortgage.

Q. Do you remember how many transactions of that kind you had?

A. No, not exactly—four or five, possibly six.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. There is one question I neglected to ask you, Mr. Bradbury: Your position in the bank, and your

(Testimony of J. M. Bradbury.)

station where you worked, was nearer Mr. Kettenbach's private office than Mr. Robnett's—the book-keeper's desk—was it not?

A. Yes, sir. [2891—2561]

Q. I will ask you, if you was engaged in your work and Mr. Robnett engaged in his work, if in your opinion it would have been possible for him to have overheard a conversation in Kettenbach's private office and you not overheard it also?

A. Both being working?

Q. Yes. A. No, sir. [2892—2562]

**[Testimony of Martin L. Goldsmith, for Defendants.]**

MARTIN L. GOLDSMITH, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. TANNAHILL.)

Q. What is your name?

A. Martin L. Goldsmith.

Q. Where do you live, Mr. Goldsmith?

A. Spaulding, Idaho.

Q. How long have you lived in the State of Idaho?

A. Ever since 1876.

Q. What is your business?

A. My present business, ferryman—the ferry business.

Q. I will ask you, Mr. Goldsmith, if you are acquainted with William Dwyer? A. I am.

Q. How long have you known him?

(Testimony of Martin L. Goldsmith.)

A. Ever since '84.

Q. Are you acquainted with George H. Kester and William F. Kettenbach? A. I am.

Q. How long have you known them?

A. Oh, I expect 20 years.

Q. I will ask you, Mr. Goldsmith, if you was ever State Land Selector for the State of Idaho?

A. Yes, I was.

Q. And during what periods of time?

A. 1903 and 1904.

Q. During that time did you make any selections for the State? A. I did.

Q. Where did you do the selecting?

A. Well, in Township 38. Do you want all that I had charge of up there? [2893—2563]

Q. Oh, no, I just want generally.

A. Those that I personally was in?

Q. Yes.

A. Not those that I sent the other parties in?

Q. Yes, I want all those; that is, generally.

A. Well, 38, 39 and 40.

Mr. GORDON.—Q. Those are the townships?

A. Townships.

Mr. TANNAHILL.—Q. And what ranges?

A. Range 5 east. 37, 39, 39 and 40—6 east. These were the townships embraced in that selection.

Q. I will ask you, Mr. Goldsmith, if you ever employed William Dwyer, Malvern C. Scott and Edwin Bliss to assist you in cruising the timber and estimating it? A. I did.

Q. How did you come to employ William Dwyer?



(Testimony of Martin L. Goldsmith.)

A. Well, he was recommended to me as being a good cruiser.

Q. Who recommended him?

A. A man by the name of Mortz.

Q. Now, how did you come to go to Mortz?

A. Well, there was several applications put in for the position.

Q. Do you remember whose applications those were?

A. Yes, I can remember a good many of them. There was Fitzgerald, Jansen,—

Q. Just give their initials.

A. Oh! J. C. Jansen.

Q. And S. P. Fitzgerald?

A. S. P. Fitzgerald.

Q. And who else?

A. Wallace Felter, and O. V. Niles—oh, there were numerous [2894—2564] others; there was about twenty; but those are the principal cruisers of that country.

Q. Now, did you have any communication or inquiry from the State Land Board relative to them, or concerning any of these? A. I did.

Q. Have you any communication you received from any member of the State Land Board relative to them? A. I have—from the Chief Clerk.

Q. Will you produce it, please?

(The witness handed a letter to Mr. Tannahill.)

A. It commences on February the 5th.

Q. I hand you a letter bearing date of February 5th, 1904, and I will ask you if that is one of the com-



(Testimony of Martin L. Goldsmith.)

munications you received?

A. That is one, sir. This is concerning the application of Jansen.

Q. I will ask you if this Mr. Jansen who is named in here is the same J. C. Jansen who testified as a witness in this case for the Government? A. It is.

Q. Whose signature is this signed to this?

A. It is Norman Jackson's, Chief Clerk of the State Land Board.

Mr. TANNAHILL.—We offer the letter in evidence, and ask that it be marked the proper exhibit.

Said letter was thereupon marked by the Reporter as Defendants' Exhibit C-1.

Q. Now, after you received that letter Mr. Goldsmith, what did you do in the way of investigating the qualifications of these men who had made application?

A. Well, I started out to find out what the responsibility of these men were, and so on. I wasn't acquainted with any of them; they were all strangers to me. It was new business to me, and I found out that applicants were in conspiracy to try to beat the State from [2895—2565] getting their prior right, by getting in fake notices and putting up notices all over the country.

Q. Now, have you any of those notices?

A. No, I haven't.

Q. Did you get any of the notices?

A. I did; I brought a number of them out.

Q. And what became of those notices?

A. Why, the Government officials have them—

(Testimony of Martin L. Goldsmith.)

Miles S. Johnson.

Q. Who was it?

A. I gave them to Goodwin and O'Fallon in Miles S. Johnson's office, the three of them together, and Johnson, too.

Q. And under what conditions did you let them have them?

A. On conditions that they would return them to me again.

Q. Have you made any effort to try to get them returned to you?      A. Oh, yes.

Q. What did you do?

A. They wanted to look them over, and agreed to leave them with Miles S. Johnson so that I could get them. I went there for them twice and Miles S. Johnson said that he didn't have them; he said that Mr. Goodwin and Mr. O'Fallon had them, and they were in Spokane. I wrote two or three letters to Spokane to try to get them, and also made a trip up there for them, but I failed to get them. They promised me that if they didn't use some of them in Boise that they would mail them to me, but they didn't do that. I have a letter from Mr. Goodwin to that effect.

Q. Have you that letter with you?      A. I have.

Q. Will you produce it?

(The witness handed a letter to Mr. Tannahill.)

Mr. TANNAHILL.—We offer in evidence the letter dated March 12th, 1907. and ask that it be marked the proper exhibit.

Mr. GORDON.—Objected to, on the ground that

(Testimony of Martin L. Goldsmith.)

it is incompetent, [2896—2566] irrelevant and immaterial.

Said letter was thereupon marked by the Reporter as Defendants' Exhibit D-1.

Mr. TANNAHILL.—Q. Now, by whom were those notices signed?

A. Jansen, Fitzgerald, Wallace Felter, O. V. Niles,—

Q. And about how many of them did you find posted?

A. Oh, some 50 or 60 notices. I had a big roll of them.

Q. And they were posted on this land that you proposed to select for the State? A. Yes.

Q. Now, did you take any inventory or investigate their cabins—these cabins that was on the places, and what was in the cabins? A. I did.

Q. What did you do? What did you find?

A. I took an inventory. Under my instructions from the State Land Board I took an inventory of these cabins, of what they consisted, where there was any, and in many instances they had filed homesteads and didn't have any cabins at all, and I took an inventory of such as there was there that we could find.

Q. I will ask you if it was also your instructions from the State Land Board not to interfere with *bona fide* homestead settlers?

A. It was. I have that in writing there.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. I will ask you if you re-

(Testimony of Martin L. Goldsmith.)

ceived any letter to that effect?

A. I did.

Q. I will ask you if this letter of March 10th, 1904, is one of the letters you received containing those instructions? (Exhibiting same to witness.)

A. Yes, sir. [2897—2567]

Q. Whose signature is that attached to that?

A. It is Norman Jackson's, the Chief Clerk.

Mr. TANNAHILL.—We offer the letter in evidence, and ask that it be marked the proper exhibit.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Said letter was thereupon marked by the Reporter as Defendants' Exhibit E-1.

Mr. TANNAHILL.—Q. I show you a letter bearing date of February 21st, 1904, purporting to be signed by Norman Jackson, on the stationery of the State Land Board of the State of Idaho, and ask you if that is a letter that you also received in connection with these State land selections?

A. It is.

Mr. TANNAHILL.—We offer this letter in evidence, and ask that it be marked Defendants' proper exhibit.

Mr. GORDON.—Objected to, on the ground that it is incompetent, irrelevant and immaterial.

Said letter was thereupon marked by the Reporter as Defendants' Exhibit F-1.

Mr. TANNAHILL.—Q. Who is the "Joe" referred to in that letter?

A. Joe Molloy, of Lewiston here.

(Testimony of Martin L. Goldsmith.)

Q. Joe Molloy?

A. Yes, sir. He is the man that made the plats.

Q. Now, from whom did you get your plats to make these selections? A. From Joe Molloy.

Q. And who got them from Molloy?

A. The Chief Clerk.

Q. And then who did you get them from?

A. Well, I got mine, too, from Molloy. One set was sent to [2898—2568] Boise, and two sets were turned over to me.

Q. I show you a letter bearing date of June 3d, 1904, purporting to be signed by Norman Jackson, and ask you if that is a letter you received from Norman Jackson, Chief Clerk of the Land Board, concerning these same matters?

A. This is not on that same selection, Mr. Tannahill. This is a later selection.

Q. But that is one you received concerning the selection of State lands, is it?

A. Yes, it is. This letter is concerning a selection made in township 39-4 east.

Mr. TANNAHILL.—We offer this letter in evidence, and ask that it be marked the proper exhibit.

Mr. GORDON.—Objected to, on the ground that it is incompetent, irrelevant and immaterial.

Said letter was thereupon marked by the Reporter as Defendants' Exhibit G-1.

Mr. TANNAHILL.—Q. And who endorsed on this: "Select in 39-4 E. Good 2d Growth"?

A. I did.

Q. You did that after you received it?



(Testimony of Martin L. Goldsmith.)

A. Yes, sir. That is the township I picked out to make the selection in.

Q. Now, have you any memorandum showing what you found in those cabins upon which the Fitzgerald and Jansen notices were posted, which was made at the time you made the inventory of the cabins?

Mr. GORDON.—Objected to, on the ground that it is incompetent, irrelevant and immaterial.

WITNESS.—I have.

Mr. TANNAHILL.—Q. Will you produce it, please? [2899—2569]

A. This is the minute-book I made the selections on. (Exhibiting small book to Mr. Tannahill.)

Q. Can you refer to the pages upon *those* those notices were posted?

Mr. GORDON.—Mr. Tannahill, may I ask what the purpose of this testimony is?

Mr. TANNAHILL.—Well, the purpose of it is to show the interest that Jansen had in these matters, and to show that the land was located—was acquired by the State in these different sections (selections?), and that Jansen and Fitzgerald had made application to the State Land Board for appointment as State Land Selectors, while at the same time they had all this property—all this land covered up with these notices, and were trying to acquire it by fictitious homestead entries.

Mr. GORDON.—Well, is it to impeach the testimony of Jansen?

Mr. TANNAHILL.—It is to impeach the testimony of Jansen.



(Testimony of Martin L. Goldsmith.)

Mr. GORDON.—Objected to as not being an impeaching question.

Mr. TANNAHILL.—And also to show the good faith of Mr. Goldsmith and Mr. Dwyer in making the State land selections.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. Can you read what you have in relation to that matter, Mr. Goldsmith?

A. To go through the whole details right through, you mean?

Q. Yes.      A. There is quite a lot of it.

Q. Well, I am referring to Jansen. See, you have here, Homestead, page 5-j.

A. Well, let's see: We will read an inventory on Miss Annie Clyde. The northeast quarter of section 22, 38-5 east.

Mr. GORDON.—I want to make an objection to him reading from the memorandum, the proper foundation not having been laid for him to refresh his recollection. [2900—2570]

Mr. TANNAHILL.—We will introduce the book in evidence so that it will be a matter of record.

Q. Now, who had signed the notice on that claim?

A. There was no notice on this one at all.

Q. And what improvements were on the claim, if any?

A. A cabin, six logs, one door, no window, hole cut on east side, hole cut on south end. The cabin is 18 by 14, bunk, two quilts, a small camp-stool, two fry-

(Testimony of Martin L. Goldsmith.)

ing-pans, buckets, one camp kettle, high mound around the cabin. There were no signs of habitation, and no clearing.

Q. On page 6 I see the homestead of F. Woods.

A. Yes.

Q. What have you in relation to that?

A. F. H. Woods. The southwest quarter of section 25, township 38-5 east; February 17th, 1903. The date is February 17th of their notice.

Mr. GORDON.—Q. What is the year?

A. 1904. That notice is 1903—the southeast quarter of section 25. Excuse me a minute—that run down on to the line, Woods' signature did. Commenced the construction of a cabin 10 by 12; white pine, small log, hole, no windows or holes, no chimney, open spaces—these two are mixed, the entries. There is a line drawn between them, and I got them mixed.

Mr. TANNAHILL.—Q. I ask you to examine page 8—

A. Just wait a minute, Mr. Tannahill, please, until I get this here. Here is on page 6; have you got page 6 there, Mr. Tannahill?

Q. Page 8.

A. Yes. Here is the east half of the southeast quarter and the southwest quarter of the northeast quarter of 23; the date of the notice on it is April 1st, 1904, cabin has a roof, no chinking, no door, no window, no floor, John Maloney, J. C. Jansen, witnesses. The name of [2901—2571] the filer is Alice Leech.

(Testimony of Martin L. Goldsmith.)

Q. Now, you have a memorandum of what you found on those claims right straight through your book, have you?

A. Yes, sir, I have. The book has been packed so much in my pocket that you have got to watch pretty close to come at it. It is smudged so much in packing, you know.

Q. And that memorandum was made at the time, was it?

A. It was. It is very voluminous; it goes through here for a number of pages, maybe a hundred pages.

Mr. TANNAHILL.—We offer the book in evidence, and ask that it be marked the proper exhibit.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Said book was thereupon marked by the Reporter as Defendants' Exhibit H-1.

Mr. TANNAHILL.—Q. I will ask you, Mr. Goldsmith, if there had been some land filed on by the homesteaders prior to this, that was where they defeated the State's rights, and the State failed to appeal, and it was lost to the State?

A. Well, yes. We filed notices of contest on these, but the State failed on its 30-day right.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. And I will ask you if you found this condition to exist pursuant to your investigation as to the qualifications of these men who had made application for appointment as State Land Selectors?

(Testimony of Martin L. Goldsmith.)

A. I found they was in this homestead business, and consequently they wasn't qualified as State selectors.

Q. And what other investigation did you make?

A. In regards to the men—in regards to these men? [2902—2572]

Q. Yes. A. Well, in regards to these filings?

Q. Yes.

A. Well, I found that the filings as far as they were concerned were simply fake filings all the way through. I found many filing notices, and I found mining claims filed there, and just as soon as the State's time was up those people turned them right into stone and timber entries. On many of those claims in there where they had filed mining notices, claiming they was mining lands, in order to keep the State out.

Q. And whose names were on those mining notices?

A. Well, I couldn't tell you all. I don't remember them all. No, I can't remember now.

Q. Where was some of the filings of persons' names on?

A. They were on some of the mining notices, and Section 33 was filed on with mining notices at the time I was in there. I selected the section, and had to cut it out, on account of mining filings. Such was the case in many sections.

Q. I will ask you if that is up in what is known as the Calhoun Gulch?

A. Oh, I don't know the names of the different

(Testimony of Martin L. Goldsmith.)

gulches in there. I don't know the names of the different creeks, I couldn't tell you. There is simply Deer Creek, and these main creeks, and Washington Creek; but these little gorges I couldn't tell you.

Q. Now, what other investigation did you make as to the qualifications of Jansen and Fitzgerald and these other men who had applied for the position of State land selectors?

A. Well, I found that they were not qualified.

Q. Well, did you talk to anyone else about it?

A. When I went out to investigate?

Q. Yes.

A. I talked to several.

Q. Who did you talk to? [2903—2573]

A. The first party I went to was Chandler.

Q. Just go ahead.

Mr. GORDON.—Objected to as hearsay, incompetent, irrelevant and immaterial.

WITNESS.—And the next man I went to was the postmaster, James A. Parker, of Orofino. He recommended me—he told me to cut the outfit out; they were all making their brags that the State could get nothing there; they had it all corralled; and recommended a man named Snyder to me.

Mr. GORDON.—My objection runs to all this as hearsay, incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. Go ahead, Mr. Goldsmith.

A. He advised me to go to this Mortz, a merchant there, as his knowledge of the cruisers was much greater than his was, as he was more familiar with



(Testimony of Martin L. Goldsmith.)

all the cruisers and the competency of the men. I showed him the list of these applications, and he told me—

Q. Who told you?      A. Mr. Mortz.

Q. All right. Go ahead.

A. To cut them out; that they were making their brags that they had got all the timber corralled in there that was of any account, and the State couldn't get any that was worth having; and I asked him then who he could recommend to me as being a competent man that knew that country. I told him that I wasn't posted in that country, and I had to have a competent man with me that knew the country; that I had made applications to Boise for men, and they couldn't send but one, and I had reported to the State Land Board the conditions there, that I couldn't get good men there, that they were all mixed up in this homestead racket, and Mortz recommended Mr. Dwyer to me. He said he was a competent cruiser and he knew all that country in there, and he didn't believe he was mixed up in the homestead claims, and I then went after [2904—2574] Mr. Dwyer to get him to go with me. He refused to go at first, and on the second time I went to see him he was living over in Clarkston, and he then consented to go. I had to beg of him to get him to go.

Q. Now, how much time had you in which to make those selections at that time?

A. We had to file on the 21st of April, and the State Land Board took no action there till the 10th



(Testimony of Martin L. Goldsmith.)

of March, I think it is. It made it that I had to obtain a larger crew than I had first anticipated on.

Q. Why was it that you was limited in time that way?     A. Sir?

Q. How did you come to be limited in time?

A. Because the State Land Board was slow in taking action on the matter.

Q. Then what did you do?

A. Well, I had Malvern Scott. He was recommended to me by C. A. Hastings.

Q. Now, right in connection with that there, did William F. Kettenbach or George H. Kester ever make any suggestion to you about the employment of Dwyer?

A. No. Mortz is the man that recommended him to me—J. P. Mortz.

Q. Well, did Kester or Kettenbach ever talk to you about it, or make any suggestion that you employ Dwyer?

A. No, sir, they never mentioned it to me, nor I to them. In fact, at the time the selections was on I never had spoke to Kester or Kettenbach, or them to me. In fact, I didn't know anything about their timber transactions, and had no reasons to go to them.

Q. Did they suggest to you that you leave any land out?     A. Never.

Q. At any time?

A. Never. And another thing: I didn't leave anything out, either. I took everything that I could

(Testimony of Martin L. Goldsmith.)

get my hands on that was worth [2905—2575] taking.

Q. There is a letter appearing in the record on page 2228, 2229 and 2230 and 2231 of the record, signed by Elmer DesVoigne, addressed to Hon. John T. Morrison, Boise, Idaho. My dear Governor:

A. What date is that?

Q. Bearing date of July 9th, 1904, in which the writer states that up to the time this selection was made it was generally understood here that the work of William Dwyer had proven to be so unsatisfactory that he had been dismissed, and that he was no longer in the employ of the State. However, Dwyer, together with Malvern C. Scott, examined or pretended to examine the land in this township, and Scott made the nonmineral affidavit on behalf of the State, and that it was given out and generally understood here that the State would make no selections in this township, and this information is said to have come from Mr. Goldsmith, the State land selector. However this may be, some of our friends here, relying upon the statement that the State would make no claim, went into the township in absolutely good faith, and at considerable expense and trouble to themselves located the land, with a view to making entries and purchasing it under the timber and stone laws. Do you know anything about that information being given out?

A. The selection of 39-4 that is, Mr. Tannahill?

Q. Yes, that is 39-4.

A. That is a later selection?

(Testimony of Martin L. Goldsmith.)

Q. Yes.

A. Yes, sir, I do; I gave that report out.

Q. How did you come to give that out?

A. Well, because of my experience in this other case, I didn't want them to know what I was doing. They would come to me and say, "Are you going to select in there?" and "Are you going to select in there?" and I said, "Oh, I don't think I will select." They were watching me, and I just played a little subterfuge. They thought the State wasn't going to select, and I done that to stop this homestead [2906—2576] line-up, and it showed that they didn't utilize them as homesteads, and they turned them into stone and timber applications; and I done that to head that off.

Q. Who was interested in that line-up? Who had charge of them?

A. Oh, I couldn't tell you. There was 75 or 80. Charlie Jansen had the charge of the first line-up.

Q. Well, I will ask you what you did in the way of making these selections? After you employed Dwyer what did you then do?

A. Dwyer came to me to see if he could ascertain in regards to *bona fide* homesteaders, and so on. My instructions was not to interfere with any *bona fide* homesteaders, but I was directed to ascertain who was and who was not *bona fide* homesteaders as much as I possibly could.

Q. And what did Dwyer do in the way of making an estimate of the timber on the land?

A. Well, he brought a plat out of the timber, fully

(Testimony of Martin L. Goldsmith.)

marked as to the timber that it was desirable to take.

Q. Have you any of those plats with you?

A. I have the cruising plat with me.

Q. Will you produce that, please?

(The witness handed same to Mr. Tannahill.)

Q. Is that marked just as it was when Mr. Dwyer turned it over to you?      A. Yes, sir.

Q. This is 39-4 east?

A. It has always been in my possession ever since.

Mr. TANNAHILL.—We offer this in evidence, and ask that it be marked the proper exhibit.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Said plat was thereupon marked by the Reporter as Defendants' [2907—2577] Exhibit I-1.

Mr. TANNAHILL.—Q. Now, after these selections were made and these various letters were written similar to this one of DesVoigne's, I will ask you if the State Land Board ordered a re-examination of these lands selected by you and Mr. Dwyer?

A. Yes, they did.

Q. Who rechecked them—checked up on them?

A. A man by the name of Fisher checked up on the selections made in 38-5 and 6, all through that first selection.

Mr. GORDON.—Q. What was Fisher's first name?

A. I don't know his first name, Mr. Gordon.

Mr. GORDON.—Q. Where does he live?

A. Moscow.

(Testimony of Martin L. Goldsmith.)

Q. And what report did Mr. Fisher make, if you know?

Mr. GORDON.—Objected to as incompetent, irrelevant, immaterial and hearsay evidence.

WITNESS.—His report was that it was one of the best selections that the State had.

Mr. TANNAHILL.—Q. The best selection that the State had? A. That was his report of it.

Q. I will ask you if any of the selections made by you and Mr. Dwyer was ever cancelled or relinquished by the State? A. No, sir, none of them.

Q. I will ask you if there was anyone else assisted or made any selections at the same time you and Mr. Dwyer did? A. Yes; Mr. Lafferty.

Q. Mr. Lafferty?

A. He was sent from Boise, and he said the selection he made in [2908—2578] 40 was cut out.

Q. About how much was cut out?

A. About 3,000 acres. He had filed on lands that was in burnings—the timber burned off of it.

Q. Has there ever been any objections made to the lands that were selected by you and Mr. Dwyer?

A. No, sir. They confirmed them as being good.

Q. I will ask you if you had a talk with S. P. Fitzgerald concerning your selections in 39-4?

A. Yes.

Q. When? A. Directly after I made the filing.

Q. What did he tell you?

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

WITNESS.—Oh, he cussed at me about it. He



(Testimony of Martin L. Goldsmith.)

said that I had just knocked him out of about \$3,500.00; he had that much of a line-up that he was going to send in if I had kept out of there, and he was pretty hot about it.

Mr. TANNAHILL.—Q. That was the same S. P. Fitzgerald that was associated with J. C. Jansen, is it?

A. Yes, sir. He tried to get in to make these selections.

Q. Do you know H. J. Steffey? A. I do.

Q. On page 2309 of the record Mr. Steffey testifies that “Mr. Goldsmith asked me to go up there, and I told him that I wasn’t able to go; that I was working for Mr. Dwyer and Mr. Kester; and he said he would fix that, and he—I think he asked Mr. Kester if I could go.” Do you remember the circumstance of Mr. Steffey going to show Mr. Blakeman and Margaret Goldsmith, your wife, and Jane Andrews, their timber claims? [2909—2579]

A. Yes, sir.

Q. Did you ever have any talk with Kester about it? A. No.

Q. And what was the circumstances of Steffey going to show these people their timber claims?

A. Why, I had made arrangements for relinquishments for these claims, and Mr. Dwyer—I asked him if he knew of any relinquishments that could be got. My wife wanted a claim, and my son in law wanted a claim—and he told me he did, and they bought the relinquishments through Mr. Dwyer, through his agency, to Riegler and Mrs. Richie, and he told me



(Testimony of Martin L. Goldsmith.)

that those relinquishments could be got, and I asked him also—

Q. Now, did you have anything to do with the Jane Andrews matter?     A. Yes.

Q. Well, who furnished the money to prove up on these claims?

A. Why, my wife and Blakeman had their own money.

Q. Who did Jane Andrews get her money from?

A. Why, she had partly—she had part of her own money, and I let her have—

Q. —the balance?

A. —the balance. She had part of the money herself; she didn't have quite enough—my daughter—and I let her have the rest.

Mr. GORDON.—Q. Jane Andrews is your daughter?     A. Yes, sir.

Mr. TANNAHILL.—Now, did William Dwyer have anything to do with the location of Jane Andrews?

A. No, sir.

Q. Did either of these parties ever sell their claims to Dwyer or Kettenbach or Kester? [2910—2580]

A. No, sir. The Jane Andrews that bought that relinquishment it was the Snell homestead, and she obtained that through negotiations with Joe Molloy—J. M. Molloy. She paid him \$400.00 for that relinquishment.

Q. And who did she sell her claim to?

A. The Clearwater Timber Company.

Q. Did she ever sell it to Frank W. Kettenbach?

(Testimony of Martin L. Goldsmith.)

A. No, sir; it was sold to the Clearwater Timber Company. J. B. West was the negotiator of the sale of it, all three of them.

Q. I will ask you, Mr. Goldsmith, if you testified at Moscow at the trial of the case of the United States against Kester, Kettenbach and Dwyer, concerning these matters, and at the time they were charged with conspiracy to defraud the United States, in violation of the stone and timber laws of the United States, and in which a portion of the land was involved as is involved in these cases?

A. Well, my testimony there—I was brought up, but I refused to testify or confirm a statement they had there because it was manipulated.

Q. Well, you testified in that trial?

A. Well, maybe I did.

Q. You gave evidence in that trial. Now, did you talk with any Government officials before you went into the trial to testify? A. Yes.

Q. Where did you talk with them?

A. In their office in Moscow.

Q. And who did you talk with?

A. Goodwin and O'Fallon.

Q. And what occurred between you?

A. Why, it was concerning a little conversation that Dwyer and me had had, and they told me they would typewrite it off and submit it to me for my approval. I told them all right, but they failed ever to submit it to my approval, and they fetched me in on the stand, and the [2911—2581] first thing I discovered the statement was manipulated. In the

(Testimony of Martin L. Goldsmith.)

first place, they didn't have the place where it occurred at all; they had it some foreign place that I didn't know anything about. In the next place, they had it that I said Dwyer had a third interest in all the Kester and Kettenbach holdings, and I didn't say any such a thing, because our conversation was only pertaining to some timber that was bought from the State of Idaho. They asked me if I would verify to it, and I thought it was manipulated.

Q. And what else happened?

A. And they called me into the office, and as the fellow said they gave me the devil. I never was abused so bad in my life.

Q. Well, state what was said to you.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

WITNESS.—Why, they threatened they would indict me, and they said they would fix me, and they would get me somehow. He says, "We will get you"—both Goodwin and O'Fallon said so, and Goodwin shook his fist under my nose and held his hand in his pocket here as though he held his hand on his gun, and they said they would find some way of getting an indictment on me; both of them said that. I told them they could indict and be damned, for I had never wronged anybody out of a dollar, and I didn't fear their indictment. That is the answer I made them. And I made complaint to the Judge about them, and also tried to get action of the grand jury on the matter; but the grand jury was under adjournment.

(Testimony of Martin L. Goldsmith.)

Q. Are you acquainted with Clarence W. Robnett?

A. Yes.

Q. How long have you known him?

A. Oh, I have known Clarence anyway as much as fifteen years, probably more; somewhere from 15 to 20 years.

Q. On page 1666 of the record Robnett testifies, in response to the following question: [2912—2582]

“Q. Well, now, did you hear anything that was said relative to Mr. Dwyer’s employment?

“A. Yes. Mr. Kettenbach says, ‘Mr. Goldsmith, what I sent for you for was to see if we couldn’t arrange to appoint Mr. Dwyer as one of your selectors to cruise the timber and make the selections for the State,’ and Mr. Goldsmith says, ‘Well, I really don’t know how I can do that, but I will see.’ ”

Did you have any such conversation as that?

A. No, sir, I did not.

Q. “Question. Did he give any reason?

“A. Well, he said Mr. Dwyer was out of the State, and there might be objections to it, and he thought that perhaps already there had been people spoken to by Mr. Jackson for that position, but if he could arrange it he would do so.”

Did you have any such conversation as that with Mr. Kettenbach?

A. No, I didn’t. I employed Mr. Dwyer on my own responsibility, on Mortz’s recommendation.

Q. Mr. Robnett also testified, in response to the following question:

“Q. Well, did Mr. Kettenbach have anything to

(Testimony of Martin L. Goldsmith.)

say about the objections that were raised?

“A. Well, he said that didn’t make any difference. He says, ‘You can state that the only man that knows anything in regards to that country out there is Mr. Dwyer, and he is just across the state line, and Clarkston is practically the same as Lewiston; he is just across the river, and there is no reason why that should make any difference, and he is operating up there in the timber, anyway, and that wouldn’t be any reason why you should not get a man across in Clarkston.’ Mr. Goldsmith said, ‘I will see what I can do, and if I can possibly arrange it why I will have Mr. Dwyer go up with me, and I will let you know.’ And a few days after that Mr. Goldsmith came into the office to see Mr. Kettenbach, and told him he could arrange to employ Mr. Dwyer.” Did anything [2913—2583] of that kind occur?

A. No, sir; that is absolutely false—absolutely false.

Q. Mr. Robnett also testifies; in response to the following question:

“Q. Now, do you know whether there was any conversation between Mr. Goldsmith and any of the defendants relative to lands that the defendants did not want selected? A. Yes, sir.

“Q. When was that?

“A. That was just prior to the time that the State made its selections.

“Q. Now, tell what you know about that?

“A. Well, Mr. Goldsmith came into Mr. Kettenbach’s private office and Mr. Kettenbach handed him



(Testimony of Martin L. Goldsmith.)

a plat and a paper.

“Q. Well, do you know what this paper was?

“A. Nothing more than what Mr. Kettenbach told me afterwards. I didn’t hear the conversation that took place there, and after Mr. Goldsmith went out I asked Mr. Kettenbach if he had arranged to hold out my claim.”

Now, did any such conversation as that occur, or did Mr. Kettenbach hand you any plats or papers relative to these selections?     A. No, sir.

Q. Or at all?

A. He never gave me any plats concerning it, or asked me anything about it. They never did. In fact, when I came in from the selections Mr. Jackson was right here waiting, and took charge of the filings—took charge of the plats at once, and made out the list and filed. They were filed away just as soon as I arrived in town. He was here waiting for them.

Q. Mr. Robnett also testifies:

“Q. Now, did you see Mr. Goldsmith relative to the Harris claim?     A. I did. [2914—2584]

“Q. What did you say to him?

“A. Why, I met him up in—I think it was in front of the Raymond Hotel, and gave him the slip of paper and told him that was the claim that I wanted him to hold out. and that Mr. Kettenbach had told me to tell him so, and he says, ‘All right, I will see what I can do for you.’ ”

Did you have any such conversation as that?

A. Why, I never had a conversation with Robnett



(Testimony of Martin L. Goldsmith.)

concerning this selection whatever.

At this time a recess was taken until two o'clock P. M. [2915—2585]

At two o'clock P. M. the hearing was resumed.

MARTIN L. GOLDSMITH, a witness heretofore called in behalf of the defendants, and duly sworn, resumed the witness-stand for cross-examination, and testified as follows, to wit:

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Goldsmith, by whom were you appointed Assistant Selector? A. Who was I employed by?

Q. Appointed by?

A. I was appointed by the State Land Board.

Q. And were you just an assistant selector?

A. No; I had charge up there. I didn't do the filing; the Chief Clerk done the filing himself.

Q. Did they call you the State Land Selector, or what did they call you?

A. Well, yes, that's what they called me.

Q. And who employed those that assisted you?

A. I did, excepting one man.

Q. That was—

A. That was Mr. Lafferty; he was sent here from Boise.

Q. Now, you spoke of some notices that you found posted that you delivered to Mr. Goodwin?

A. Yes, sir.

Q. And that you didn't get them back again?

A. Yes, sir.

Q. Now, what were those notices?

(Testimony of Martin L. Goldsmith.)

A. They were notices of—claiming homestead notices. They [2916—2586] were posted all over the country, to shut the State out of making these selections.

Q. Well, you say they were filed for that purpose. If they had made a legitimate selection, wouldn't they have had to file some sort of a notice?

A. If who made a legitimate selection?

Q. Anybody?

A. Well, you mean homesteaders?

Q. Yes. A. No, sir.

Q. What sort of notice should they have put up?

A. They should put up a house and inhabit it. That constitutes settlement, is actual improvements.

Q. No, but the man that goes into a forest before the State has made its selection, and legitimately settles on a homestead, doesn't he have to post a notice, too? A. It is absolutely unnecessary.

Q. Well, isn't it often done?

A. Oh, yes; it is very often done.

Q. Well, I say, what is the purpose of the notice?

A. It is a notice for people that they have taken a homestead there.

Q. And if they made a legitimate settlement there, that notice holds good, doesn't it?

A. No, because they have got to file on it.

Q. Sir?

A. They have got to make a filing on it and inhabit it, if I understand the homestead law right.

Q. Now, did you know this: You know that if you get in ahead of the State, and before the State has

(Testimony of Martin L. Goldsmith.)

made its selection, that you come in ahead of the State, don't you, if you make a legitimate filing?

A. If they make a legitimate filing; yes, sir.  
[2917—2587]

Q. Now, they don't have to have a house built the day they sit down there, do they?

A. When they make their actual settlement?

Q. No, I am speaking about when they come in they don't have to make a selection before the State to give them a right, do they?

A. Yes, sir. The State has got a 60-day prior right of everything except a *bona fide* homesteader.

Q. Now, suppose a man goes in there and squats, as you call him, before the State has the survey made?

A. Yes.

Q. Does he come in ahead of the State?

A. Yes; if he files his squatter's right, he does.

Q. Now, when does he have to file the squatter's right? Doesn't he have 30 days after the State makes its selection to file a squatter's right?

A. No, sir; not that I know of. In fact, in these matters here a man has as many as a dozen notices up. Has a man more than one homestead right?

Q. No; but I am asking how long he has to make his filing. A. A homesteader?

Q. Yes.

A. As I understand the law, a man has to make his filing and notice of settlement in the land office, and settle.

Q. When?

(Testimony of Martin L. Goldsmith.)

A. Any time. He can do it prior to the State's filing.

Q. Well, can't they do it within 30 days after the State makes its selection?

A. If they are a *bona fide* settler such might be the case. I wouldn't swear positively on that.

Q. Now, what did these notices recite? Were they printed notices?

A. No, sir; most of them were written notices. There were some [2918—2588] cloth notices that were printed. The notices were all the same. They were all about 5 or 6 inches wide, and about 8 or 9 inches long.

Q. Now, what did those notices say?

A. Well, it was just a recapitulation over the country, signed and witnessed Maloney, Fitzgerald and Jansen, and Jansen, Fitzgerald and Maloney.

Q. I can't understand a word you say. Wait a minute. You are talking too fast. Did you understand that, Tannahill?

Mr. TANNAHILL.—No. You don't separate your words, Martin. Speak distinctly, so we can understand you.

WITNESS.—Well, those notices showed on the faces of them fraud.

Mr. GORDON.—Q. Yes; but what did the notices say? What was on the notices?

A. A notice of a homestead, or a notice of a mining claim.

Q. Well, I know; but did it just say, "A notice of a homestead," or "A notice of a mining claim," or

(Testimony of Martin L. Goldsmith.)

what was the phraseology?

A. "I hereby claim such and such ground for a homestead," or "I hereby claim such and such ground for a mining claim."

Q. Now, I understand you to say that they were claims upon which notices had been filed that were signed by Jansen?      A. Yes.

Q. Now, do you remember which they were that were filed that had a notice that Jansen had filed upon?      A. Which particular claims?

Q. Yes, sir.

A. Well, I couldn't tell you right off now which particular claim. The book will show that, but I couldn't tell you; and those notices, of course they never returned them as they agreed to do. Those were in evidence, but they failed to do as they agreed to do; they failed to return them to me.

Q. And how many notices did you give Mr. Goodwin?

A. I couldn't tell you. I haven't any recollection how many it [2919—2589] was. It was a roll of them.

Q. Was it five or six?

A. Oh, Lord, yes; there was a roll of them; there was probably over twenty; I have no doubt there was. I never set down how many there was, but I am giving you a rough estimate.

Q. And in how many townships were these notices?

A. They were taken out of 37, 38, 5 and 6; that is, 37-6; 38, 5 and 6; and some were out of 39-5 and 6.

Q. Now, were there other notices there besides



(Testimony of Martin L. Goldsmith.)

those signed by Jansen?     A. Yes, sir.

Q. How many?     A. I couldn't segregate them.

Q. I am just asking for your best recollection now.

A. Well, my best recollection is that the majority of them were signed by Fitzgerald and Jansen—the majority of the notices.

Q. And you haven't any idea who the rest of them were signed by?

A. Oh, the book will show you that. I couldn't recapitulate that off there. The book will show you a good many of them. But in some instances there would be no foundation or sign of habitation but just the notice; and in other cases just the foundation and no notice.

Q. Now, do you remember the names of any of those who signed the notices?

A. O. V. Niles, Wallace Felter, and let me see: there was Wallace Felter, O. V. Niles, and Jake Maloney, and a fellow that used to live in Pierce, I can't call his name now. Oh, it is Niles—O. V. Niles, I think. I wouldn't be positive of his initials, but it is Niles.

Q. Now, how many did each one of them have?

A. Oh, I can't tell you how many each one had.

Q. Well, I mean how many did those three have among them, as well as you can remember? [2920—2590]

A. I never kept a separate tab on them. My object in bringing those notices out was expecting the State would contest the right of those homesteads. That is my object in bringing those notices out, for the



(Testimony of Martin L. Goldsmith.)

benefit of the State.

Q. You employed Mr. Malvern C. Scott as an assistant, did you?     A. Yes, sir.

Q. On whose recommendation did you employ him?

A. C. A. Hastings—State Treasurer Hastings.

Q. Mr. Hastings?     A. Yes, sir.

Q. And Mr. Bliss?

A. Mr. Bliss, I employed him by Mr. Dwyer's recommendation. I asked him to find me another cruiser.

Q. Now, are you familiar with the conflict list that was filed relative to the State selections?

A. By the State?

Q. Yes, sir.

A. Well, yes. I haven't it by recollection, but I helped make up the conflict list; I assisted the Chief Clerk in making it up.

Q. Now, how many of those claims that were in conflict with the State selection had these notices on that you referred to?

A. Well, the greater part of them.

Q. The greater part of them?

A. Yes, sir. There was maybe 55 or 65 that we had on our contest list.

Q. Now, was this conflict list abandoned by the State?

A. Well, they just simply slept on their rights. The 30 days expired before they carried on the action.

Q. They didn't take any appeal?

A. Why, they had 30 days to take it in, to file a

(Testimony of Martin L. Goldsmith.)

notice, and they failed to go ahead with it.

Q. That is, the State failed to go ahead with it?  
[2921—2591] A. Yes, sir.

Q. Now, was there any discussion about that among the members of the State Land Board?

A. Well, not in my presence there never was; no.

Q. Now, you spoke of a man by the name of Mortz; what is his full name?

A. Oh, we always called him Jakey, that's all I know. I don't know whether it is Jacob or John.

Q. Do you know where he is now?

A. I think he is dead. He was a merchant in Orofino.

Q. Do you know how long he has been dead?

A. He has been dead, it must be three years, probably, three or four years.

Q. How long were you and your selectors in the timber, making the estimates and going over this timber?  
A. How long were we in there?

Q. Yes, sir.

A. We went in along in the fore part of March, and came out about the 19th or 20th of April—the 19th, I believe.

Q. You say the 18th or 19th of April?

A. Yes. We came out about the 19th, if I recollect.

Q. And when did you get to Lewiston, do you remember?

A. We got in Lewiston, I think it was the 20th, if I remember right. Of course, I can't give that to you to the day now.

(Testimony of Martin L. Goldsmith.)

Q. I am just trying to get your best recollection.

A. Well, we got in here about the 20th.

Q. And did you remain in Lewiston any length of time?

A. Oh, I stayed in here until after the filings was made, I think. If I remember right the filings was made the 21st or 22d, some time about that time.

Q. Were you in or about the land office?

A. Yes. [2922—2592]

Q. During that time?

A. I was in the land office about that time, yes. Mr. Jackson sent me up once to look about some homestead claims. I don't remember what they were.

Q. That was while you was in Lewiston?

A. At the time they was making the list, yes.

Q. And the opening was when? The 24th of April, wasn't it?

A. Let me see: I think the filing was made the 21st or 22d, or somewhere along there. It might be the 24th. I couldn't tell you the day now.

Q. Now, how many crews did you have in the timber? A. Three.

Q. Now, state how those crews were divided.

A. Well, sir, Mr. Dwyer and myself, and Bliss and Scott. We took 38, 5 and 6, and 37, and cruised part of 39, the south part of it.

Q. Now, were you and Scott and Bliss and Dwyer together in your work?

A. Well, we camped together; but, for instance, I would send them out to certain sections to look over,

(Testimony of Martin L. Goldsmith.)

Bliss and Scott, and Dwyer and me, we would go over and look at another section.

Q. Did you and Dwyer work together?

A. We did.

Q. And the other two worked together?

A. That's it; and Mr. Lafferty and a man by the name of Snyder worked together in the northern part of 39 and 40, 5 and 6 east.

Q. What is Mr. Snyder's first name?

A. John is all I know.

Q. Do you know where he is now?

A. Orofino, I presume. The last I heard of him he was up there. His residence is there.

Q. Now, who made up the plat of the work that you and Mr. Dwyer were doing? [2923—2593]

A. The cruising plat?

Q. Yes. A. I made it on my own hook.

Q. Now, you referred to Mr. Dwyer coming out of the timber and bringing a plat fully marked with him. A. That is another selection, later on.

Q. What selection was that?

A. That was in June the same year. That is 39-4. We are now in 5 and 6 east.

Q. Now, you spoke of some selections that Fisher made that the State rejected some 3,000 acres.

A. No, sir. I don't know that Mr. Fisher made any selection.

Q. Lafferty? Was that it?

A. Yes, sir. No; Fisher was sent in afterwards to examine the selection.

Q. Now, how much was in that portion that you

(Testimony of Martin L. Goldsmith.)

referred to? How much was in that book that you referred to—how many acres?

A. You mean that was—the entire selection—or what do you mean?

Q. Yes, that they rejected?

A. Oh, that was rejected? There was about 3,000 acres; something like that.

Q. Now, do you know the reason that was rejected?

A. Well, there was two reasons for it. One was they had overdrew their lot; and in the next place he had filed on some burnings there, that there was no timber to amount to anything on, and I made complaint about it, because it came to my knowledge, and I made complaint myself to the State Land Board about it.

Q. What township was that in? A. In 40.

Q. Now, 40 in what?

A. It was in both town 5 and 6. [2924—2594]

Q. 40, 5 and 6?

A. Yes, sir. It may be that it run some over into 39, I wouldn't be positive about that. You understand that I didn't myself go into those towns in this northern part there.

Q. Now, wasn't that rejected because the Commissioner had advised the Land Board or the Governor that the State had selected much too much, and they would have to abandon it, and gave them a description of it?

A. That was one reason it was cut out; but I had also made a complaint to the Board, and asked them to send a man to examine it, because I was getting



(Testimony of Martin L. Goldsmith.)

the blame of some burnings being selected in there that I wasn't responsible for. I made application myself for them to do that.

Q. Did you employ the selector that went over these lands that were burned?     A. No.

Q. Well, who cruised them?

A. That northern part, Mr. Lafferty was sent from Boise. The Governor, I think, sent him himself—Governor Morrison. He had been appointed personally by the Governor, or else by the State Land Board.

Q. Now, you were telling of an experience you had at Moscow. You say that you had some talk with Mr. Goodwin and Mr. O'Fallon?     A. Yes.

Q. Now, where was this talk with them?

A. In the office there at Moscow.

Q. That was at the grand jury session?

A. Yes, the grand jury, the time of their term there, but it wasn't in the grand jury room.

Q. Did you appear before the grand jury?

A. No.

Q. You were summoned there by the Government, were you not?     A. Yes. [2925—2595]

Q. And you made a statement to them, as I understand?     A. Yes.

Q. And did they write your statement down?

A. They took it in shorthand.

Q. And then when was it extended into typewriting?

A. I don't know. They told me they would put it into typewriting and submit it to me, but they

(Testimony of Martin L. Goldsmith.)

failed to do it.

Q. Now, when did you have a talk with them again after that?

A. I don't know the date of it, but it was during the trial. I was brought into the trial.

Q. Well, I mean was it during the same trial?

A. The same session, yes, sir.

Q. A few days afterwards?

A. About ten days, probably.

Q. And you were brought into court; though, by the Government, were you?

A. By the Government, yes.

Q. And were you asked anything about your transactions with Mr. Dwyer by the Government officials?

A. I was asked concerning a conversation that took place between me and Dwyer up in the mountains there, and I told them what it was.

Q. I mean were you asked that in court?

A. No.

Q. I am speaking now when you went into court and testified?

A. Oh! They asked me if I had this certain conversation with Mr. Dwyer at such a time, and I told them I had had a conversation, but it wasn't submitted to me, and I wanted it read. I didn't want to verify something they didn't read to me.

Q. Was this in the court?

A. Yes, sir, in the court.

Q. At whose trial was this?

A. The Kester and Kettenbach trials. [2926—  
2596]

(Testimony of Martin L. Goldsmith.)

Q. And did you go on the stand for the defense, and not for the Government?

A. No, sir, I did not.

Q. Did you testify for the defendants at that trial?

A. No, sir.

Q. You didn't?      A. No, sir.

Q. Mr. Goldsmith, do you say that you were not called and sworn at the trial of Kester and Kettenbach on behalf of the defense?

A. No, sir—I was subpoenaed by the Government.

Q. Sir?

A. I was subpoenaed by the Government, as a Government witness.

Q. Well, I am asking you whether you were not called by the defendants and put on the stand by the defendants and testified for the defendants?

A. Not that I know of.

Q. Don't you remember being examined by Mr. Moore, of counsel—

A. I was examined there in some cross-questioning there, but I couldn't tell you the details of the cross-questioning. I was put on the stand there by Mr. Ruick.

Q. Mr. Goldsmith, weren't you called as a witness for the defense, and that after you got through testifying for the defense several days later Mr. Ruick put you on the stand in rebuttal?

A. No, sir. I was only in the courtroom once that I have any knowledge of.

Q. Are you sure of that?

A. I have no knowledge of it.

(Testimony of Martin L. Goldsmith.)

Q. You are M. L. Goldsmith, aren't you?

A. M. L. Goldsmith, yes, sir.

Q. I read from page 1483 of record 1605, which was referred to in the stipulation of William F. Kettenbach and George H. Kester and William Dwyer, at Moscow—or the trial of them at Moscow, and I read, [2927—2597] as I say, from page 1483:

“M. L. Goldsmith, a witness called and sworn for the defendants, testified as follows, on

“Direct Examination by Mr. MOORE.

“Q. What is your full name?

“A. Martin L. Goldsmith.

“Q. How old are you, Mr. Goldsmith?

“A. Fifty-three.

“Q. Where do you reside?

“A. Spalding, Idaho.

“Q. How long have you been a resident of Idaho?

“A. Thirty years.

“Q. Where have you resided during the major portion of that time? A. Nez Perce County.

“Q. Are you acquainted with Mr. Norman Jackson? A. Yes, sir.

“Q. Do you remember the time certain lands were selected in 39-5 I believe, and 38-4 and 5 or 5 and 6? A. In 38-5 and 6.

“Q. Yes, 38-5 and 6. Do you remember that the selections were filed, the lists were filed about the 24th of April, 1904? A. Yes, sir.”

Do you remember those questions being asked you by Mr. Moore?

A. I don't remember the questions that Mr. Moore asked.

(Testimony of Martin L. Goldsmith.)

Q. Does that refresh your recollection any?

A. Well, I was on the stand there. You mean in cross-examining me? I was on the stand, as I tell you, for the Government, before. I wasn't a defense's witness. I can't tell you what questions were asked me in cross-examination.

Q. That is not cross-examination, Mr. Goldsmith; that is examination-in-chief.

A. Well, if there is any direct examination by the defense there, [2928—2598] I don't know of it.

Mr. GORDON.—(After consultation with Mr. Tannahill.) It is stipulated that he was called by Mr. Moore, and then recalled by Mr. Ruick in rebuttal.

Mr. TANNAHILL.—Yes—Mr. Goldsmith has forgotten that.

Mr. GORDON.—Q. Now, Mr. Goldsmith, you didn't tell at that trial anything about being threatened with indictment, did you?

A. Why, no; the threatening with indictment was afterwards—after I came out of the courtroom.

Q. Well, at the time that you say that Mr. O'Fallon put his hand to his hip pocket?

A. No—that was Goodwin put his hand to his hip pocket.

Q. Was it Goodwin that put his hand to his hip pocket? A. Yes. They was both together; yes.

Q. And was that when you had your talk with them the first time?

A. Oh, no; that was after I came out from the courtroom.



(Testimony of Martin L. Goldsmith.)

Q. Did you ever talk with Mr. Kester or Mr. Kettenbach about these land selections?

A. I never had no conversation that I know of, particular.

Q. Didn't you have a talk with one of them about these selections?

A. Not that I know of. Not prior to the selections; I may have since.

Q. Well, did you have any just after the selections were made?

A. Well, I don't know as I did. The only thing I know of is, they asked me why I took all of their scripped land and didn't take what Fitzgerald had scripped.

Q. Do you remember this question being asked you by Mr. Moore when you were on the stand in behalf of the defendants at the trial I have referred to; I read from page 1488: The questions is: "Who else was employed by you?" "Answer. There was a conversation when we [2929—2599] came in to file. When I came from the land office, when I came back from filing there was a conversation concerning some other locations they had made." "Question. Between whom?" "Answer. Me and Kettenbach. I don't know whether Mr. Kester was in that conversation or not."

A. I don't remember the details of that. They scored me concerning the scrip—

Q. Well, just answer that question. Do you remember that question being asked you by Mr. Moore, and you making that answer?

(Testimony of Martin L. Goldsmith.)

A. No, I don't remember it. The fact of the matter is that I had forgot that Mr. Moore ever put me on the stand.

Mr. TANNAHILL.—Now, go ahead and finish your answer that you started.

WITNESS.—Well, I answered it once.

Mr. GORDON.—Well, answer it again. I cut in on you. You were making some explanation.

A. Yes; I said I didn't remember anything about that question being put to me by Mr. Moore. In fact, I don't remember that he ever put me there.

Q. Well, what was this conversation which you had when you came back from filing, with Mr. Kettenbach?

A. I couldn't tell you what the conversation was.

Q. Well, where was it?

A. It was—something was said to me on the sidewalk after we had filed concerning the filings, but I couldn't tell you what the substance of it was. I know it was about filing on the scripped ground that they had scripped, but I couldn't tell you the details, word for word what was said.

Q. When you employed Mr. Dwyer did you know he was a resident of the State of Washington?

A. Yes.

Q. Did you know that he had filed a number of contests on homesteads? [2930—2600] A. No.

Q. Does the State Selector and the Assistant Selector have to qualify as a resident of the state in which he is selected? A. No, sir.

(Testimony of Martin L. Goldsmith.)

Redirect Examination.

(By Mr. TANNAHILL.)

Q. As I understood you to say, Mr. Goldsmith, at that talk you had with Kettenbach there was something said about why it was that you took all their scrip, and didn't take the Fitzgerald scrip; is that right?     A. Yes, sir.

Q. And as a matter of fact the Skuse scrip was laid on a number of these townships, was it not?

A. Yes, it was.

Q. Do you know who laid that Skuse scrip?

A. Fitzgerald was the man that laid it.

Q. Fitzgerald?

A. Yes, and he came to ask me not to touch them.

Q. In what township were they laid?     A. 38.

Mr. GORDON.—Let me ask him a question.

Mr. TANNAHILL.—Yes.

Mr. GORDON.—Q. Mr. Goldsmith, where did you start in to doing your cruising when you went there to select?

A. Well, we commenced on 17— Section 17, 38-5; that is where it is known as the Eureka cabin; that was the first cabin.

Q. The Eureka cabin?     A. Yes, sir.

Q. And then you worked east, did you?

A. We worked south and east, and the other crew—Lafferty went [2931—2601] north.

Q. Now, did you work over as far as the Brown cabin?     A. Yes, sir.

Q. And did you put up there at any time?

A. Yes, I did; I was there quite a while.

(Testimony of Martin L. Goldsmith.)

Q. And that is in the southeast quarter of section 23, is it not?

A. I forget now whether it is in 23 or 25. It is in the vicinity of that, anyway. It is on what they call Deer Creek there.

Q. Now, how far east did you go, Mr. Goldsmith?

A. East to Washington Creek.

Q. How far is that?      A. Well, by the trail?

Q. No; I mean in what township and section?

A. Oh, that is in 38-6 east.

Q. And what section?

A. What section over there?

Q. Yes?

A. We cruised the most part of the township in there.

Q. Well, I mean you yourself with Mr. Dwyer. That is what I am trying to find out, where you and Mr. Dwyer went?

A. You mean the particular sections that me and him cruised?

Q. Yes. But I am trying to find out how far east you and Mr. Dwyer went, first?

A. We went over 38-6. From section 17 in 38-5, over to the east border line of 38-6. Well, I don't know that we were exactly on the border line; but we took the general course of the township of 38-6.

Q. Now, was there a trail through there?

A. Yes, sir.

Q. Through what sections did that trail run?

A. Oh, well, I couldn't tell you that. It was as crooked as a dog's hind leg. I couldn't tell you.

(Testimony of Martin L. Goldsmith.)

Q. You followed the trail pretty well, did you?  
[2932—2602]

A. Oh, we had to in making camp, yes.

Q. And you went in every section, did you?

A. No, I don't know that I was in every section; I couldn't say that. There was sections in there that was scripped that it wasn't necessary to go on at all.

Q. Well, did you go on every section that wasn't scripped?

A. I don't think we did that. I don't think we had time to go through every section.

Q. Now, do you remember what sections you were in, in 38-6?      A. No, I don't.

Q. Have you any memorandum of that at all?

A. Yes, sir; that book will give it. There is an inventory there of it in that book.

Q. And after you went east into 38-6, did you come back and forth to Brown's cabin?

A. We came back to Brown's cabin. That is the way out again.

Q. Then from Brown's cabin did you go on west to the Eureka cabin again?

A. No; we didn't go back to the Eureka cabin any more; we came out by way of Pierce.

Q. That goes south of Brown's cabin, does it, going to Pierce?

A. The trail comes south. It comes up what is known as Reed Creek.

Mr. TANNAHILL.—Q. To what extent did you follow the section lines when you were cruising those townships?



(Testimony of Martin L. Goldsmith.)

A. Oh, we had to follow the lines to determine the timber, and we would do what we call stripping. We would go and find a section corner, then we would step back 80 rods and pack a compass, and by doing that you would run through the 40 as near as we could to ascertain what timber there was in these quarters. That is the usual way of doing it. We would find the corners, and drop forward and back again to [2933—2603] the quarters and half quarters.

Q. Then you didn't follow the trails when you were cruising? A. Oh, no, not a bit of it.

Q. Now, you spoke of this Skuse scrip being laid. Upon what part of the township was this Skuse scrip laid?

A. Well, it was scattered around in 38-5, and on different sections. If I remember right, there was some in section 22, or 21. It was scattered out in different sections; it wasn't all placed in one place.

Q. Now, in 38-5 and 38-6 there was also some homesteads, was there? A. Yes, sir.

A. About how many homesteads was there that you had to omit? A. Oh—leave the land out?

Q. Yes.

A. Do you want each township separate?

Q. Yes.

A. Well, I couldn't tell you separate.

Q. Well, especially in 38-6?

A. Well, I think there was more in 38-6 than there was in any other, to the best of my recollection.

Q. But I am speaking now of *bona fide* home-

(Testimony of Martin L. Goldsmith.)

steads? A. *Bona fide*?

Q. Yes.

A. I don't think you have got any. I didn't find any of them.

Q. Now, how many mining claims was there in 38-5 and 38-6 that you had to skip?

A. Well, they were scattered out over the township. The notices were stuck out all over the townships, so that all up along the Reed Creek country, and this Deer Creek country, and in section 23, when I got in from Pierce and hunted up the records I found that was filed on just a few days before, and as soon as the State's time had expired [2934—2604] they turned it around into stone and timber.

Q. Why didn't you take those mining claims?

A. My instructions from the State Land Board is not to interfere with *bona fide* homesteads, and also you will see in regards to mining claims. I received my instructions from Boise to that effect.

Q. Well, what became of those mining claims after the State had made its selections?

A. Well, sir, they went into stone and timber, invariably.

Q. Mr. Goldsmith, Mr. Jansen testified that the timber was very light along Washington Creek, and it would go about a million feet to the quarter section, and more, and some of it possibly a little less.

A. Yes.

Q. I will ask you why you took in Washington Creek?

A. Well, I took up and down Washington Creek

(Testimony of Martin L. Goldsmith.)

for to give an outlet for the selections that we made upon it. I wanted a creek outlet.

Q. And you selected Washington Creek irrespective of its value as for timber?

A. Yes—just a quarter section, that was all. It was a mile long I selected up and down the creek. My idea was it might be handy sometime for slushing purposes, to slush out, or mill purposes, either.

Q. Now, there was also some complaint about a selection that you made in 39-4 east, the plat furnished you by Mr. Dwyer, and over which selection this circular that was issued and circulated around through the country about October, 1904, for campaign and political purposes, and I see that you selected right up to the river, and some of it is marked "Poor timber," and "Rough," and "Rough," and "Timber light." A. Yes.

Q. What instructions did you give Dwyer relative to the selection of this land along the river, if any?

A. Why, I told him to give us a river outlet if he could. That is, I didn't want the State to have a body of timber in there and be cut off from the timber to get it out. I knew that the timber was [2935—2605] light along on the river. I was aware of that myself. I had been up the river. But at the same time, I considered that we should have an outlet on the river—considered it important that we should. You see that we didn't take any great body of it along the river, just enough to give us an outlet; you will see that by the plat.

Mr. GORDON.—Q. You just got one or two claims

(Testimony of Martin L. Goldsmith.)

on the river, you mean?

A. We didn't get any great body of it on the river, no; just enough to give us a river outlet.

Mr. TANNAHILL.—Q. I will ask you if you have been over this section of the country, and if this plat correctly represents the timber land and the value of the timber land?

A. No; I haven't been all over it.

Q. You haven't been all over it? A. No, sir.

Q. And this plat is marked "H" for homesteads, and a carat for timber, and a circle for lands not good? A. A "goose egg," we called it.

Q. And that is there now so that it can be compared and investigated at the present time?

A. Yes, sir.

Q. And determine whether or not your selections were proper, or whether or not you defrauded the State, as charged in that circular?

A. There is the plat to prove for itself. I was in the south part of that township.

Mr. GORDON.—Q. That plat is in the same condition as it was when Mr. Dwyer gave it to you?

A. Yes, sir; it has been in my possession. I have had it in my possession all the time. It has never been altered or changed in any way. [2936—2606]

Mr. TANNAHILL.—Q. Now, Mr. Gordon asked you something about how these notices were witnessed. I didn't understand your evidence in regard to that. I will ask you to repeat that.

A. Well, I will state it was just Fitzgerald, Maloney and Jansen, and Jansen, Maloney and Fitz-

(Testimony of Martin L. Goldsmith.)

gerald, or Maloney, Fitzgerald and Jansen; just like I would shake buck bones (?) one time, and another time change it over; and that is the way it run. It wouldn't be Jansen, Fitzgerald and Maloney straight; the next would be changed over—Maloney, Fitzgerald and Jansen—so it was just about all just alike.

Q. I will ask you, Mr. Goldsmith, if Mr. Dwyer furnished you the minutes of the lands that this Skuse scrip was laid on, for selection by the State; that is, if he turned in a report on that land?

A. It was turned in with the list, yes. We turned in everything, regardless of what filing it was; it was all turned over to Mr. Jackson.

Q. You also turned over the land that Kester and Kettenbach had laid some scrip on, subject to the State's rights?

A. Yes, sir. This was in accordance to instructions—written instructions that we have filed here to-day from the State Land Board in regards to—that the State would probably offer filing on.

Q. And the State selected the scripped land that Kester and Kettenbach had laid, subject to the State's right, and left the Skuse scrip that Fitzgerald had laid, subject to the State's right?

A. They didn't take that.

Q. I will ask you if you had a conversation with Norman Jackson concerning the selection of State lands, and the fact that there was no funds with which to pay the expenses, before these selections were made?



(Testimony of Martin L. Goldsmith.)

A. Yes, sir; the State was short of funds, was one reason that I guess they didn't get around to it sooner. I urged the State to make these selections, to get its selections. I wrote several letters to Boise urging them to get in and get their selections, to get the land; [2937—2607] it was being taken up fast and the first thing they knew they wouldn't get their selections, and in a personal conversation between me and Mr. Jackson he told me that the State hadn't got the funds; that the Governor was desirous of running the term through on the appropriation, and didn't want to issue any deficiency warrants if possible, and it wasn't until the eleventh hour that they decided that in order to get the land that they would have to get in. They lost much valuable selections through not issuing deficiency warrants and getting in sooner.

Q. Now, what instructions did you have from the State Land Board regarding the selection of State lands in a body?

A. Oh, they didn't want me to segregate the lands, if I could help it, but to get it in as near a body as possible.

Q. What instructions did you give Mr. Dwyer in regard to that?

A. I told him I didn't want isolated pieces.

Q. You was asked by Mr. Gordon concerning the relinquishment of some lands that Mr. Lafferty selected which you said were burned-over lands and the timber was of no value on them. How did Mr. Lafferty inspect these lands and cruise the timber?

(Testimony of Martin L. Goldsmith.)

A. From observations from trees a good deal, his assistants told me.

Q. And he didn't go on to each legal subdivision or estimate it, at all?

A. No; he didn't have time to do it. You will observe that our time was very limited there to go over the vast territory we had to go over.

Recross-examination.

(By Mr. GORDON.)

Q. Mr. Goldsmith, where was this plat made out that Mr. Dwyer gave you?

A. Where was it made?

Q. Yes. A. I couldn't tell you. [2938—2608]

Q. And when you employed Mr. Dwyer, where did you confer with him? A. On that selection?

Q. No. I say, where did you confer with him when you employed him?

A. Oh! I went over to his house, over in Clarkston.

Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all. [2939—2609]

[**Testimony of William Dwyer, for Defendants.**]

WILLIAM DWYER, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name? A. William Dwyer.

Q. What is your age? A. 52.

Q. Where do you live, Mr. Dwyer?

A. Lewiston.

(Testimony of William Dwyer.)

Q. How long have you lived in Lewiston?

A. Two and a half years.

Q. Where did you live prior to moving to Lewiston?     A. I lived in Clarkston, Washington.

Q. How long did you live there?

A. Why, I lived there since '98, excepting a period I lived up in Latah County, on a homestead.

Q. You are one of the defendants, are you?

A. Yes, sir.

Q. How long have you known William F. Kettenbach and George H. Kester, the other defendants?

A. Oh, about twelve or thirteen years.

Q. You have heard the evidence of the various witnesses in regard to your connection with Kester and Kettenbach in timber matters, have you?

A. I have.

Q. What was your first business transaction with the defendants relative to timber matters?

A. Why, I done some work for them.

Q. Just state generally what that was, without going into details.

A. Oh, cruising some land for them—up in the Potlatch, I [2940—2610] think, and also on the St. Maries, and on the Palouse River—the north part of the Palouse River.

Q. What experience have you had in cruising timber?

A. Well, I have cruised timber since about '87 or '88.

Mr. TANNAHILL.—I am going to withdraw Mr. Dwyer, and put Mr. West on.

Mr. GORDON.—All right. [2941—2611]

**[Testimony of J. B. West, for Defendants.]**

J. B. WEST, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?      A. J. B. West.

Q. Where do you live, Mr. West?

A. Lewiston, Nez Perce County, Idaho.

Q. How long have you lived in Lewiston?

A. About 12 years.

Q. Are you acquainted with the defendants George H. Kester, William F. Kettenbach and William Dwyer?      A. I am.

Q. How long have you known them?

A. Well, I have known them about the same length of time.

Q. Are you acquainted with Harvey J. Martin, a witness who testified in this case?

A. Of Spokane?

Q. Yes.      A. Yes.

Q. Did you have any business transaction with him relative to the sale of some land that was owned by Kester and Kettenbach?

A. Well, we were trying to sell some land, and part of it belonged to Kester and Kettenbach and some other parties here, my wife and myself had about 700 or 800 acres in it.

Q. And you got an option—gave an option on some of Kester and Kettenbach's lands, did you?

A. He got an option, yes, sir.

(Testimony of J. B. West.)

Q. Mr. West, in a certain letter which you wrote to Harvey J. Martin I notice a statement you made that you had learned that William Dwyer was interested in these lands, and had something to say about the sale of them, or words in substance and of that effect, referred to in [2942—2612] a letter introduced in evidence by the Government, signed by you, and addressed to Harvey J. Martin at Spokane, Washington, Complainant's Exhibit 93. I will ask you if you remember writing that letter.

A. I remember—I don't just remember now what was in the letter, but I wrote him several letters, I know that, while we had this option, trying to get the option, trying to dispose of the land, that I talked to Mr. Dwyer about it, and he had—well, he said his wife had some claims, I have forgotten how many—twelve, it seems to me like now—that she had some claims that would go in this, and I don't just remember what I wrote to Mr. Martin about it, but it was to that effect, that Mr. Dwyer said it belonged to his wife, but then he was looking after that, and just the same as my claims would be in with my wife's, while 400 or 500 acres of it belonged to my wife.

Q. I will ask you if that is what you referred to when you spoke about Dwyer's interest in those lands that was being sold? A. Yes, sir.

Q. That you was trying to sell? A. Yes, sir.

Q. State whether or not Mr. Dwyer, or Kester or Kettenbach or anyone else, ever told you that Dwyer had any interest in the lands in the name of Kester and Kettenbach. A. No, they never did. No.



(Testimony of J. B. West.)

Q. Did you ever know anything about Dwyer ever having any interest in any of the lands?

A. No. I was talking to Dwyer about this matter, and I was trying to get him to—in fact, we was trying to get a second option; our option had expired, and I was trying to get Dwyer to see Kester and Kettenbach, principally Kettenbach; he was here and Kester in Spokane; and see if we couldn't get the second option. Martin said the man was ready to put up the money, or words to that effect, and I talked to Mr. Dwyer about it, and he said he had no interest in the land except what his wife had, and he couldn't control or do anything with anything that [2943—2613] Kester and Kettenbach represented; it was only what his wife had that he had any say over at all.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all. [2944—2614]

[**Testimony of William Dwyer (Recalled), for Defendants.**]

WILLIAM DWYER, a witness called by the defendants, and duly sworn, being recalled by the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. About how many years' experience had you had in cruising timber?

Mr. GORDON.—Did you ask him whether he had cruised timber before he came here?

Mr. TANNAHILL.—I don't know that I did; I will, though.

WITNESS.—Oh, I had been in the woods for 30

(Testimony of William Dwyer.)

or 35 years.

Q. And where had you cruised timber before you came to Idaho or Washington?

A. Oh, in Michigan, Minnesota, and Wisconsin.

Q. Now, state generally what the business of a cruiser is. Explain what you do in the cruising of lands.

A. Well, to cruise lands, to cruise it correctly you have got to have blue-prints and plats of the country, that is, with surveyed countries; and hunt up your section corners and quarter posts and run your forties by stepping—compassing and stepping it, and correcting up when you get through a section you correct up the first point, the quarter post or section corner whichever is the closest, to see if you have been correct in coming through. That is for accurate cruising.

Q. And how do you estimate the timber?

A. Well, in a great many ways. Some people estimates different; some of them just counts going through, and then they average it. In large timber a great many—I do in large timber—get the true count.

Q. And after you worked for Kester and Kettenbach in the Potlatch country, did you do any work—How was you paid for that work? A. By the day.

Q. And then where did you work for them next?  
[2945—2615]

A. Let me see, I worked a summer for—I worked a summer for the Clearwater Timber Company after that, and I guess I didn't do any work for them until

(Testimony of William Dwyer.)

that fall. I just forget, but—I can't tell—I cruised a great deal of different pieces of land for them.

Q. And how was you paid for cruising that land?

A. By the day.

Q. And have you ever made any purchases of land for them? A. Yes, sir.

Q. What did you do in the way of making purchases for them?

A. Why, I was in touch with very nearly all of the land owners and had been in the country and had had estimates of all of it, and I naturally had opportunities to buy a great deal of land.

Q. And how was you paid for the purchase of lands that you made for them?

A. Oh, I got about a five per cent commission.

Q. State whether or not you had any interest in the lands owned by Kester and Kettenbach?

A. I had not.

Q. You have heard the evidence of the various witnesses, have you, concerning your dealing in timber, and concerning your locating people on timber claims, have you? A. Yes, sir.

Q. Now, what is the business of a locator? What do you do in the way of locating people on land?

A. Well, with the average person in this country you have to do it all. They wasn't familiar with the timber, nor the mode of locating. You had to see that their papers was made out, and that their witnesses was gotten, and all of the details for them.

Q. Could you collect your location fee until the people had got a correct filing?

(Testimony of William Dwyer.)

A. Well, as a rule, no—I didn't.

Q. What location fee would you usually get?  
[2946—2616]

A. Oh, I would get from \$100.00 to \$200.00. The location fee, when I first started in the early part of the timber business here was about \$100.00 was all you could get, and you had to guarantee them a filing, and guarantee them that they would make proof, because there was so much scrip being laid, and lots of people had made selections of land and wasn't able to prove them up. The State would come in and select, and everything else, and get them all mixed up.

Q. You have heard the evidence of the various witnesses and the record evidence concerning your employment as an assistant cruiser for the State, helping Mr. Goldsmith cruise out some timber selected by the State, have you?      A. Yes, sir.

Q. Now, what was the circumstances of your employment?

A. Why, Goldsmith came over to my place in Clarkston and wanted to know if I had—if I knew of some woodsmen, and I told him that I did, some men that used to work with me. He wanted to know—he went on and related the circumstances of the State, and how they were delayed, and he was in an awful hurry, and he wanted to know if I wouldn't go up and help him, and I told him I didn't think I wanted to go up there at that time of the year, it was almost useless. Well, he said then, he told me about who recommended me—Jake Mortz; he was a merchant at Orofino. Well, I think I told him I would see him

(Testimony of William Dwyer.)

again, and the second time I saw him I consented to go.

Q. Now, how did you come to see him? State whether or not he telephoned for you to come over?

A. He telephoned me, I think, the second time. The first time he came to the house, I believe, and I think he telephoned the second time; I won't be sure, though.

Q. And where did you meet him? Did you meet him on this side or on the other side?

A. I think he came to my house just before we went up. I think I seen him up to this man Bliss' house—the compass man that used to [2947—2617] work with me—or woodsman.

Q. Did you ever have any talk with either Kester or Kettenbach regarding your employment by Mr. Goldsmith? A. No, sir.

Q. All right. Now, after you was employed by Mr. Goldsmith, just go ahead and relate what you done.

A. Why, I went up and took some men up, took two men up, and we had to pack our supplies from Orofino, and we got some supplies and started up, and we went as far as Hatch's, and then we had to cut them in two there, and go on into the Eureka cabin, and there wasn't any trail broke; there was no road to Orofino, even, at that time; that is, that was kept open that winter. The snow was very deep and we had to pack in there by hand, and I think we made a couple of trips from Hatch's to the Eureka cabin, when Mr. Goldsmith came in with the Boise



(Testimony of William Dwyer.)

man, he said he had to wait for some people to come from the land board or the land office in Boise. He came in there with him, and we all went into the Eureka cabin together, and Mr. Lafferty brought in some plats there, and he segregated out the plats and the crews, and he says, "You go with Goldsmith, and I will take this man Snyder and this other cook," and whoever this other man was, I have forgotten; and so we started there and went on and checked up the lands; and of course it was easy for me to check them up, because I knew the country very thoroughly; I knew where the section corners was, and the quarter posts, and all the lines.

Q. Well, then, what did you do in the way of checking them up?

A. Why, we would go through and run them, and go to those cabins, and Mr. Goldsmith would take a record of the cabins and the notices, and when he was along any time that we done work with him why we just gave him the notices, gave him the day's work at night when we came into the cabin. The other fellows that was working would sit down at the table and tell him where they was that day, and what lands they had looked over, and about how much timber and how many cabins they saw, and [2948—2618] what the conditions was, and he would keep it, and that's about all that was done. And the next morning we would get up and do the same work over again, only on other lands.

Q. About how far was that country posted with notices with cabins there?

(Testimony of William Dwyer.)

A. Well, all of the lands that had any timber on was covered with notices of some kind or other—homesteads, or scrip, or placer mines, or something.

Q. Now, what scrip filings were made there?

A. Well, there was what was known as the Skuse scrip—J. J. Skuse.

Q. Now, was there any mining claims filed? Did you find any mining claims?

A. Well, I want to modify that last answer. Do you mean, Mr. Tannahill, all of the scrip that was filed in that country, or the scrip that was filed on the land that we went to select?

Q. Well, the lands that you went to select is what I am asking about now.

A. Well, that was the Skuse scrip. That's right.

Q. Now, about the mining claims; did you encounter any mining claims? A. Yes.

Q. About how much of the land was covered with mining claims?

A. Oh, it was down there, here and there. There was a lot on 33 and 26 and 27, and some on 23, 22, 17—it was dotted all along up there.

Q. Now, what township was this you were selecting in? A. 38 and 5.

Q. Now, what instructions did you have, if any, concerning protecting the mining claims and *bona fide* homesteads?

A. Well, we fellows that was working there didn't have any particular instructions, only just in a general way Mr. Goldsmith had the [2949—2619] instructions, and when they would be reported he

(Testimony of William Dwyer.)

would say, "Well, we have got to make notice of them, because the State don't want to interfere with any *bona fide* miners or settlers."

Q. Now, what instructions did you have concerning the selecting of land in a body?

A. Why, Mr. Goldsmith would object to small lots of land—eighties or forties—that didn't lay together; he wanted it grouped. He said, if I understand right, that the State had very nearly exhausted its rights, and he wanted groups of land together—or selected together; it would be more valuable than it would be scattered around.

Q. Now, as I understand you, this was in 38-5 east? A. Yes.

Q. Now, is there anything else in connection with that particular selection of that land selected that you haven't related that you can relate?

A. Nothing particular, I guess, that I know of.

Q. Now, concerning this scrip, I will ask you, Mr. Dwyer, about how many acres of land that Skuse scrip covered?

A. I couldn't tell you just now. My working plat that I had there is gone. But there was several acres of it. There was some laid on 14, 13, 12, 23, I think on 26—it was scattered all around there.

Q. There were several hundred acres of it?

A. Oh, yes; there was quite a big body of it.

Q. Now, I will ask you if you furnished Mr. Goldsmith the minutes of this land, and the estimates of it, for the purpose of the State's filing?

A. Oh, yes; it was all taken.

(Testimony of William Dwyer.)

Q. It was all taken? A. All taken.

Q. Now, what subsequently became of that land?

A. Why, I filed timber and stone— [2950—2620]

Q. Just wait a minute. Was this scrip—this Skuse scrip—who was it laid that scrip?

A. S. P. Fitzgerald.

Q. Now, was that land taken by the State?

A. No, sir.

Q. Now, did Kester and Kettenbach lay any scrip in this same township, subject to the State's rights?

A. Not in that township. They did in 39-5, and 40-6.

Q. And did you cruise that at the same time?

A. No. Mr. Lafferty cruised that.

Q. Lafferty cruised that? A. Yes, sir.

Q. And did the State select the lands that were filed on—that the scrip filings covered, or Kester and Kettenbach, subject to the State's rights?

A. Yes, sir.

Q. Now, what subsequently became of this land that was filed on that was covered by the Skuse scrip?

A. Why, I filed timber and stone entries over it.

Q. Now, can you name some of the people that you located on that land?

A. Why, I located Mr. and Mrs. Hopper, I think Miss Elizabeth Kettenbach, Mrs. White, Jackson O'Keefe—well, there are some more, but I can't recollect who they are.

Q. And that same land you had furnished Mr. Goldsmith with the minutes of it and your estimate of it for the State to file on before? A. Yes, sir.

(Testimony of William Dwyer.)

Q. Now, the people that you located on that land, how did they come to file ahead of the Skuse scrip?

A. How did they?

Q. The Skuse scrip, as I understand you, was laid before the land was subject to entry, but laid subject to the State's rights. Now, [2951—2621] how did the stone and timber claims come to be filed ahead of the scrip?

A. Why, the scrip was rejected, but if the scrip owner had got in ahead of the timber and stone entrymen and reapplied for that land, why he would have what they call kept the scrip alive; they couldn't reject it after the State's right had been exhausted; the first one that came with the application got the land, either the timber and stone, or you could have put the scrip on it if you wished.

Q. Did you hear the evidence of the witness Joseph H. Prentice, of Clarkston, that he was fifth in line, and S. P. Fitzgerald offered him \$500.00 for his place in the line?

A. Yes, sir; I was there.

Q. Was that the same S. P. Fitzgerald that laid this Skuse scrip?

A. Yes, sir. He sent another man there to break through the line. He sent a man by the name of Kays the same day.

Q. And as I understand you to say, you had cruised that land before you went up there with Mr. Goldsmith?

A. Oh, yes; I had worked in there a couple of years.

Q. Did you hear the evidence of J. C. Jansen relative to the timber on a portion of this land, or that



(Testimony of William Dwyer.)

the State could have gotten better land than it got in this section?     A. Yes, sir.

Q. What have you to say about that?

A. Why, he don't know what he is talking about.

Q. And was you in that country when Jansen claims that he was in there and cruised this land?

A. In the winter of 1903 and 1904?

Q. Yes.

A. That was the winter that we was working for the State. We never saw a track in there—not a mark—never met a homesteader.

Q. Now, how long would it have taken him to have systematically cruised this land that he says he cruised during the winter of 1903 and 1904? [2952—2622]

A. Why, if he cruised all he claims he cruised in there it would take him about seven or eight months, maybe longer.

Q. Did you hear his evidence that the State had selected some land out on Washington Creek that there was very little timber on?     A. Yes, sir.

Q. Was that any part of Washington Creek in this same land that you had cruised?

A. Well, just across the township line in 38 and 6—that was on section 20—that takes the creek on both sides, right up the middle of the meadow. Mr. Goldsmith took that for other purposes.

Q. And state whether or not that was selected with a view to obtaining the timber.     A. No.

Q. Now, what have you to say about the selections, as to the kind of timber on the land that the State

(Testimony of William Dwyer.)

selected in that section of the country where you and Mr. Goldsmith did your work?

A. Well, outside of the—where I and Mr. Goldsmith worked on Washington and Reed's Creek, you mean?

Q. Yes.

A. Well, it was very poor timber; that is, for the timber that was in there it was a poor class; the very best of it had been taken by scrip and homesteaders, and then naturally came the State.

Q. Was that the best timber that was left after the scrip filings and homesteaders had taken theirs?

A. Yes, sir.

Q. But it was necessarily—the State had to take the third choice?      A. Yes, sir.

Q. Now, where did you work next?

A. I don't know where I did work next. It seems by this plat that I must have worked in 39-4 in June. No—we went to 37-6 from [2953—2623] there, Mr. Tannahill.

Q. What did you do there?

A. Oh, we looked that town over. We didn't select any land in it.

Q. Why didn't you?

A. Oh, there was four or five claims for every cabin that was in there, and there wasn't much of it, so we just let it go. It was not a very good township.

Q. Now, when did you say you selected 39-4?

A. That summer.

Mr. GORDON.—Selected, did you say, or cruised?

Mr. TANNAHILL.—Cruised.

(Testimony of William Dwyer.)

Q. I will ask you to look at this plat I hand you—Defendants' Exhibit I-1, and state whether or not you prepared that plat?

A. Yes. That is a kind of a field-note plat that I furnished him.

Q. When did you prepare it?

A. Why, I prepared it at the time that I was on the land. I presume that was made up in the cabin. We had those plats, usually, with us.

Q. And what is the key to that plat? How are the lands designated?

A. Well, "H" is homesteads, and the check-mark here is timber, and the zero is light covered—light lands—lands with little timber on.

Mr. GORDON.—May I ask when it was that he said he cruised that timber in 39-4?

WITNESS.—Oh, I cruised it—I had been through this timber two or three times before I made this plat.

Q. Well, I mean about what year was it?

A. I cruised this township before it was surveyed; I couldn't tell you just when; I think it was when they first started to survey it. [2954—2624]

Q. What was that—1903?

A. I believe so. I don't remember now; but the surveyors was in there.

Mr. TANNAHILL.—Q. What was the circumstances of you going back there and going through it again and making that plat?

A. Why, to see about how many homesteaders was in there. There was a line-up here at the land office,

(Testimony of William Dwyer.)

and they didn't know whether they were homesteaders or what.

Q. And who had charge of that line-up?

A. Mr. Jansen.

Q. J. C. Jansen?      A. Yes, sir.

Q. The man—the witness in this case who testified for the Government?      A. Yes, sir.

Q. I notice in that plat that you have, Mr. Dwyer, that the State has selected some land down next to the river that is marked by you as light. How did they come to get that land?

A. Why, to have an outlet to the river, to have a river frontage; to have water frontage. In other words, so that they could have banking grounds, or have access to the stream.

Q. And that land is not selected with a view of its value for timber—for its timber value?

A. Not generally, no; it was taken right straight through to the river here.

Q. I will ask you if that plat has been in the possession of Mr. Goldsmith, or have you ever had possession of it since it was turned over to Mr. Goldsmith?

A. This is the first time I have seen it since.

Q. And I will ask you if the timber—if that land is in practically the same condition now that it was at that time, with reference [2955—2625] to its value for timber.

A. Yes, sir, I think it is. Oh, there might have been a little bit of a fire up along here. There are some cuttings along the river here. There might

(Testimony of William Dwyer.)

have been a little fire in there; but it is practically the same.

Q. And an examination of the land now, you say, will support the notations which you have made on that plat? A. Yes, sir.

Q. I see you have noted "James Evans homestead." Is that the James Evans that filed a timber and stone claim, and was referred to here as one of the Colby and Emory entrymen?

A. I think he is.

Q. I will ask you, Mr. Dwyer if you ever at any time made any suggestion to Mr. Goldsmith that he leave out any particular lands for the purpose of enabling you to locate timber and stone entrymen upon them? A. No, sir, I never did.

Q. And did you leave out any valuable lands for that purpose, or for any other purpose, when you was cruising the land for Mr. Goldsmith?

A. No, sir. He had a record of all the lands that was cruised, excepting this plat of 39-4 here.

Q. And you worked under his directions all the time?

A. Yes, sir. He took the plat down here, and—

Q. I will ask you if your work has been checked over since you did the work and the State lands has been selected—been checked over by any other State land official? A. Yes, sir.

Q. Who checked them over? A. Mr. Fisher.

Q. And how did he come to recheck them, or check them over?

A. There was some controversy—there was a cir-



(Testimony of William Dwyer.)

cular got out here once and distributed around here, and there was some comment made, [2956—2626] about the lands, and I saw Mr. Martin, and I also saw Governor Gooding, and I told him that they had plenty of men that was running around, and they might just as well send them over those lands to get them checked, and Mr. Marvin told me he would surely do it when he got back, and he had the Governor send Mr. Fisher over those lands, and I met him when he was up there from coming down, and he said it was the best selection that the State had had that he had ever seen.

Q. Was any of those lands that you and Mr. Goldsmith selected, or that you had anything to do with selecting, or that Bliss or Malvern C. Scott selected, that was ever relinquished by the State?

A. No, sir.

Q. Mr. Dwyer, you have heard the evidence of the various witnesses relative to the claims involved in bill 406, have you not? A. Yes, sir.

Q. I will ask you if you are acquainted with William B. Benton? A. Well, yes, I have known him.

Q. Did you have anything to do with acquiring title to a tract of stone and timber land by William B. Benton or Joel H. Benton? A. No, sir.

Q. Or George W. Harrington? A. No, sir.

Q. Have you ever had or claimed any interest in those lands? A. No, sir.

Q. Did you have anything to do with the timber and stone entry of Van V. Robertson?

A. Yes, sir.

(Testimony of William Dwyer.)

Q. Have you ever had or claimed any interest in that tract of land?      A. No, sir.

Q. Or John W. Killinger?      A. No, sir.

Q. Or of John E. Nelson?      [2957—2627]

A. No, sir.

Q. Or of Soren Hansen?      A. No, sir.

Q. Or of James C. Evans?      A. No, sir.

Q. Or of Pearl Washburn?      A. No, sir.

Q. Or of Lon E. Bishop?      A. No, sir.

Q. Or of Frederick W. Newman?      A. No.

Q. Or of Charles Dent?      A. No.

Q. Or Charles Smith?      A. No.

Q. Or of George Morrison?      A. No.

Q. Or of Edward M. Hyde?

A. No. There are a lot of them people I don't know at all. I have never seen them.

Q. I just want to know if you had anything to do with them?      A. No, sir, not a thing.

Q. Or of Drury M. Gammon?      A. No, sir.

Q. Do you know Guy L. Wilson?      A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of stone and timber land?

A. I located him on a stone and timber claim.

Q. Will you tell us all you know about that entry, just what you had to do with it, beginning with the first time you met Guy Wilson concerning it?  
[2958—2628]

A. Well, the first time that I heard his name mentioned in regards to a timber claim, his father in law—

Q. Who was that?

(Testimony of William Dwyer.)

A. Mr. Justice. He was a farmer from Wisconsin.

Q. David Justice?

A. David Justice. Him and Mrs. Justice wanted to get some timber claims, and—oh, we had been talking about getting timber claims, I guess, for two or three years, and I finally told them that if this land was opened up here, and it wasn't all scripped or taken by the State, that there would be an opportunity, possibly, to get a timber and stone claim off of it, on that third or fourth choice land, and the old gentleman wanted to know what kind of timber it was, and I told him, and he said he would have to go up and look at it; he didn't know. I told him it was small second growth timber. So we went up, as I remember it, a crowd together, there was six or eight went along, and we went up there and looked the timber over and had a general talk as to the quality and quantity of the timber on the land, and about what the price of it would be, about what it would be worth, and Mr. Justice didn't take any claim; he didn't like it; he said it wasn't the kind of timber he had been used to looking at back in Wisconsin, and he didn't like it. But that was in the fall before. So there wasn't anything done then until the next spring, in April, I think, and their son also got a claim up there. He had a good deal to say about it. He had worked up in there in the mines, and he knew the country up in there, and he was working here for the electric light people, I believe, and I used to see him every day or two, and he asked me how that land was coming on, and I would say, "Well, I don't

(Testimony of William Dwyer.)

know; it is hard to tell." So I can't remember all the little details about it but, however, the land was opened for entry and they got in line and got claims.

Q. Now, what talk did you have with Guy Wilson about it? Did he go to see you?

A. He came to my house, I think, one evening, about borrowing [2959—2629] the money. Mrs. Justice came and talked about borrowing money first, and I said—I understood her to say she had an arrangement with her brother, and also that she had an arrangement with Mr. and Mrs. Hopper, too. She said that arrangement had fallen through with Hopper's folks, and Hopper's folks lived up there and they got to comparing notes about the timber, and the old gentleman thought it wasn't worth much, I guess, and they changed their mind, and I told her I would see about it, and she says, "Well, I guess he can't get his money from her mother," or somebody like that, "and he will come and see you." And I think he came down to my house shortly after, in the evening, after he was through work, I think.

Q. Now, do you remember the conversation you had there?

A. Not in detail; but I know I told him I would arrange to borrow his money for him, and take the land for security.

Q. Now, what arrangements did you have about going to look at the land, regarding the payment of expenses, etc.?

A. Well, that was with the old gentleman; that was an argument I had with him about the expenses up

(Testimony of William Dwyer.)

there, and we finally agreed that I would pay their expenses into the timber, because I had horses of my own up there, and I had a special rate there at the livery barn and I could get horses cheaper than anybody else, and I said I would stand those expenses and they could stand their railroad fare, and if I got their claims, why all well and good, and if not, why we would both have to lose what we had in.

Q. What were they to pay you for your location fee?     A. I think they were to pay me \$100.00.

Q. And then what happened next? You went and looked at the land—took them over the land, did you?

A. Well, yes. This was after I had taken them over the land, I think.

Q. After you had taken them over the land?  
[2960—2630]

A. Yes. I think this was in the winter time; I think this was along just about before they filed that they made the money arrangements, if I remember right. At the time I took them over the lands it seems as though they had other arrangements for the money. That was in the fall before.

Q. Well, the arrangement that you were to stand the expenses from Orofino and they were to pay the railroad fare?

A. Oh, that was before we went up at all; that was before.

Q. And this other arrangement was made before they filed?     A. Yes.

Q. And they got into line, did they?



(Testimony of William Dwyer.)

A. Yes, sir.

Q. Who notified them to come and get into line?

A. Well, they were in line when I came down from the timber. I don't know, but I have a kind of a recollection that this Justice boy—this boy that was working here in the—

Q. Fred E. Justice?

A. Yes—kept tab on it.

Q. And you had nothing at all to do with them getting into line?

A. No, I don't know, but if there was any that wasn't in line I presume I notified them right away, because if there was going to be any locations made I wanted to protect my fee, you know; I wanted them in line so they could get the land if there was any.

Q. Now, who looked after the getting of their papers—their filing papers?

A. Well, sir, I think that was Mr. Fred Justice.

Q. Now,—

A. I think he had the minutes of the land, and I think he went and got the filing papers for them, after the State had filed.

Q. Now, after they filed, then they proved up some time in July, did they?

A. Yes, sir. [2961—2631]

Q. Now, what happened in relation to Guy L. Wilson's final proof? What did you have to do there?

A. Why, he was to give me a mortgage or an option on his land for security, and he finally changed

(Testimony of William Dwyer.)

his mind after he proved up, and he came to me and I guess it was during the noon-hour, while he was working—he was working here, I think,—yes, he was at work at the light office; and he said that he thought he wouldn't make any mortgage. He said he had been talking with his folks, and I don't know whether he meant the old man Justice or somebody else, and he just concluded that he wouldn't hold his claim and pay interest on it.

Q. Now, you say, a mortgage or an option on his land. What do you mean by that?

A. Why, an option for the exclusive right to sell, or a mortgage—possibly it was a mortgage. Sometimes where a person wanted to sell their land right away, and there wasn't a buyer, I would get an option on it, giving me the right to sell, you know.

Q. Now, did you have any arrangements to purchase this land from him before he made his final proof? A. No, sir.

Q. And the question of his selling his land, that was taken up after he had made his final proof?

A. Yes. He said he had a talk with the folks, and I think he meant Justice's folks.

Q. Now, that was sold to Kester and Kettenbach, was it? A. Yes.

Q. And the Frances A. Justice claim, that was purchased by Mrs. Dwyer? A. Yes.

Q. What happened in relation to her final proof and the sale of the land?

A. Well, she borrowed some money on hers. I know—I think, if I remember right, she borrowed

(Testimony of William Dwyer.)

some money on hers the day she proved [2962—2632] up, and she sold it later on.

Q. Now, did she give a mortgage, or a contract?

A. Yes, she gave a mortgage. She gave a mortgage, and I think it was a short time mortgage, though—six months, or possibly a year. But I remember all about her selling her claim; I remember it better now than I did at Boise.

Q. What was that?

A. Because it was the time the Shevlin-Clarke people came in here to buy some timber, and I mentioned it to my wife, and I said, "If you can buy Mrs. —." She was telling me about Mrs. Justice wanting to sell her claim, she says, "She wants to sell that claim; she wants to use some money." I says, "I'll tell you what you do: You try to buy that claim, because the Milwaukee people are in here trying to buy timber, and I think you can make a little money out of it." And she says, "Do you think I can?" And I says, "I think you can." I have just got my recollection on that refreshed since I was in Boise.

Q. Now, did you get a location fee from Frances A. Justice and Guy L. Wilson? A. Yes, sir.

Q. Did you have any arrangements for the purchase of Frances A. Justice's claim before she made final proof? A. No, sir.

Q. Did you have anything to do with Edna P. Kester acquiring timber land—or a tract of timber land?

A. I located her, yes, sir.

Q. You have no interest in that land?

(Testimony of William Dwyer.)

A. Not the least.

Q. And you got your location fee?

A. I think I did.

Q. Do you know anything about Elizabeth Kettenbach acquiring title to a tract of timber land?

A. Yes, sir. [2963—2633]

Q. What do you know about that?

A. I located her; that's all.

Q. And she paid your location fee?

A. She paid her location fee; yes, sir.

Q. And you have no interest in that land?

A. No.

Q. No interest in Edna P. Kester's land?

A. No, sir.

Q. And no interest in any of the other tracts of land, except the interest that you may have with your wife? A. That's all.

Q. And William J. White and Elizabeth White and Mamie M. White, did you have anything to do with their acquiring title to a tract of timber land?

A. Only locating them.

Q. And you got your location fee? A. Yes, sir.

Q. And you have no interest in the land at all?

A. Not any.

Q. And Marthe E. Hallett, do you have any interest in that land? A. No, sir.

Q. You located her, did you? A. Yes, sir.

Q. And she paid your location fee?

A. Yes, sir.

Q. And Daniel W. Greenburg, what do you know about his acquiring title to a tract of land?

(Testimony of William Dwyer.)

A. I located him.

Q. What did you do in regard to that?

A. Nothing, only located him, I guess; that's all I know about it.

Q. And you got your location fee? [2964—2634]

A. Yes, sir.

Q. You have no interest in that land?

A. No, sir.

Q. And did you have anything to do with David S. Bingham acquiring title to a tract of timber land?

A. Yes; I located him. Bingham was an old-timer up in that county there, and he naturally would know if there was any of that land vacant up Silver Creek, and he asked if I could get him a location up there, so I located him on a piece of land up on Silver Creek that he knew. He wasn't in the woods with me; he had been up there long before that.

Q. You got your location fee?

A. I did, yes, sir.

Q. And you have no interest in the land?

A. None whatever.

Q. And you had no contract or agreement to purchase the land? A. No, sir.

Q. Do you know William McMillan?

A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land?

A. Only locating him.

Q. And did you have anything to do with the sale of it? A. Yes. I bought it.



(Testimony of William Dwyer.)

Q. You bought it?      A. Yes.

Q. Now, how long did he have this land—had he proved up on it, before he sold it?

A. If I remember right, that land was bought about the same time as Frances A. Justice's was, along that summer.

Q. Long after he made his final proof?

A. Oh, yes, a long time after he made his final proof. [2965—2635]

Q. Did you have any contract or agreement with him for the purchase of the land, before he made his final proof?      A. No, sir.

Q. Do you know Hattie Rowland?      A. Yes, sir.

Q. What did you have to do with her acquiring title to a tract of timber land?      A. I located her.

Q. And did you have anything to do with her sale of the land?

A. I bought that land for my wife, also.

Q. How long after she had made her final proof?

A. I bought it at the same time I did McMillan's.

Q. Did you have any understanding or agreement with them that you should purchase this land, prior to the time they made their final proof?

A. No, sir.

Q. And the purchase price was paid for each of these tracts of land, was it?      A. Yes, sir.

Q. Do you remember how much you gave for Hattie Rowland's claim?

A. I can't remember, Mr. Tannahill, what the price was, now.

Q. Do you know William E. Helkenberg?

(Testimony of William Dwyer.)

A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land?

A. Why, yes—stone and timber?

Q. Yes.      A. Yes, sir.

Q. What did you have to do with that?

A. I sold him a relinquishment that he knew about the land; he knew the land that this relinquishment was on, and he had had other [2966—2636] claims up there and had sold them himself, up in the small timber, and he worked in there for a number of years; he was a woodsman with Roubadoub & Walker, and when he found out about this relinquishment he wanted to buy it, and he did buy it and proved up on it; and I think Kester and Kettenbach bought the land of him.

Q. You have no interest in that land?

A. Not any.

Q. You had no arrangements with him for the sale of his land, prior to the time he made his final proof?      A. Not any.

Q. Did you have anything to do with Elma Haevernick or William Haevernick acquiring title to a tract of timber land?      A. Not any.

Q. You have no interest in this land?

A. No, sir.

Q. Did you have anything to do with Garry Van Artsdalen or Robert O. Waldman acquiring title to a tract of timber land?      A. No, sir.

Q. Nor the sale of it?

A. No, sir. I would say in connection with that,

(Testimony of William Dwyer.)

though, that I bought a homestead that had been proved up for years by Garry Van Artsdalen's father. I purchased that from him. I also purchased a homestead from William E. Haevernick.

Mr. GORDON.—That is objected to as incompetent, irrelevant and immaterial.

WITNESS.—Van Artsdalen sold to the Clearwater Timber Company; but I bought a piece of land from Van Artsdalen, but it wasn't his timber and stone.

Mr. TANNAHILL.—Q. Do you know Rowland A. Lambdin? A. Yes, sir.

Q. What do you know about his acquiring title to a tract of [2967—2637] timber land?

A. Why, I located him on a tract of timber land.

Q. Just state all that you had to do with that.

A. Well, sir, I have forgotten a good deal of the details. I remember that he went up and looked the land over, and I remember his going up because he lost his pocket-book, and I remember that the relinquishment that I sold him was gotten from a man by the name of Hupp, and it was up in 40-1 West, and I remember that I gave Mr. Kester or somebody an estimate of it later on, after the land was proved up, and I—of course, I know in a general way that he sold it to Kester—Kester or Kettenbach—I guess everybody knows that. But I can't remember anything about the sale, or the circumstances.

Q. Do you know Ivan R. Cornell? A. Yes, sir.

Q. Do you know anything about his acquiring title to a tract of timber land?

(Testimony of William Dwyer.)

A. Why, yes, I do. I showed him my homestead up in 40-1 west, and Mr. Kester, I think, asked me to try and get—or that there was a man wanted a homestead here that he had known in Portland.

Mr. GORDON.—Wanted a homestead?

WITNESS.—He was in bad circumstances, yes.

Mr. TANNAHILL.—Q. Wanted a homestead, or a stone and timber?

A. Well, he didn't say; he didn't care so much; he didn't know but what he would hold down a homestead, if I understood it; and I discouraged him about it. I said, "You can't make a living up there; there is too many people up there now that has to go out harvesting and working; there is nothing to do there." I says, "If you haven't got money you couldn't hold a homestead in there, but," I said, "there is timber enough on this; you can turn it to a timber and stone if you want to." I think there was only about 136 acres. It was some land that the Wisconsin Log & Lumber Company had cut out, and their cruiser [2968—2638] was showing it to me one day. He says, "There isn't enough timber on it," and he says, "It is a wonder you don't file on it," and I says, "Well, I am going to do it"—his wife was sick—and so I filed on it, and I took my wife up there, and she had heart trouble, and I had to get out of there in the night and get a man to walk over to ——— Meadows in the middle of the night to get a team and go for the doctor, and the doctor told me to take her out of there, and I did so. And that is how that came about.

(Testimony of William Dwyer.)

Q. Now, did you come back to Lewiston with Cornell?     A. Yes, I think I did.

Q. And what do you know about his making his final proof?

A. Only in a general way; I know it was made; I think I was his witness.

Q. Now, did you have anything to do with the sale of his land?     A. No, sir.

Q. Do you remember whether you went in with him to see Kester about selling it?

A. I don't know. I may have, but I don't think so. I think Kester told me that that kid wanted to sell his claim, and he called him "that boy," or something—"that boy wants to sell his claim. I wonder how much it is worth?" And I don't know just exactly what was said at that time. I know he sold it, anyway.

Q. Now, did you have anything to do with the sale of his land before he made his final proof?

A. No, sir, not a thing.

Q. Do you know Fred W. Shaeffer?

A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land?     A. Yes, sir.

Q. What did you have to do with that? [2969—2639]

A. Why, he was janitor up there in the building, and he used to call me up about every day or two about getting him a claim and getting one for his sister, and finally C. W. Mount over here had a filing on a piece of land that joined this one that I located



(Testimony of William Dwyer.)

—that joined my homestead—and somebody had been joking him about his ranch up there, that it wasn't any good, and he told me, he says, "I wish you would get rid of that claim some day for me to some fellow," he says, "I don't want it." I says, "What is the matter?" He says, "It ain't any good." He says, "Pierson laid scrip right up against it and cut that out," he says, "That ain't any good." I says, "All right, possibly I can get rid of it for you, Charlie." So that is the claim that Fred Shaeffer got. Then there was a Mrs Hanson had a claim right next to it, and he wanted me to get that for his sister. He said his sister was coming out, he was expecting her out, and I believe he told me afterwards that when he came out of the woods he met her on the same train coming into the woods. And every time I saw him after I came back to Lewiston he would ask me about that land, and about his sister, and wanted me to get a claim for his sister, because they wanted to get a half section of land.

Q. Now, did you hear Robnett's evidence, that you came down and made out his filing papers for him, and took him up and filed them? A. Yes.

Q. What was there about that?

A. Oh, that's not true. I didn't come down at all. A couple of men met him up there from Wisconsin; they drove in with a buggy, and Mr. Shaeffer took their team and buggy and drove out of the woods himself, and I didn't see him for several days—oh, a couple of weeks after that.

(Testimony of William Dwyer.)

Q. And were you present when he made his final proof?

A. Why, I think so. I think so. I am not certain.

Q. Did you have anything to do with the purchase of his land by Kester and Kettenbach? [2970—

2640] A. No, sir.

Q. Do you know Carrie D. Maris? A. No, sir.

Q. Do you know anything about the purchase of that land?

A. No, sir, only I cruised her claim once—what they called the Carrie D. Maris claim.

Q. How did you come to cruise it?

A. A couple of years or three years ago I think I was in Pierce and I got a long distance call, and Mr. Kester asked me if I would go and cruise a piece of land over on Reed's Creek, over in Section 12, and I told him I would, I guess. He says, "I wish you would"; he says "It is that piece of land I was talking to you about before you went up." He says, "It belongs to Robnett," and he told me before I went. He said, "Robnett wants to sell a claim here, do you know anything about it?" and I says, "I don't know anything about it." "Well," he says, "do you think it is worth while looking at it?" and I says, "Well, if he has got a claim that is worth while looking at it is the first one I ever knew about." And so a few days later he called me up at Pierce and told me to go and look at that claim, and so I did; and when I came back Mr. Kester told me he had bought it; and that is all I know about the Carrie D. Maris claim.

(Testimony of William Dwyer.)

Q. You had nothing to do with her filing on the claim, or purchasing it, before she made her final proof?

A. I don't think I ever saw the lady; if I did, I didn't know it.

Q. Do you know John H. Little?      A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land?      A. Not a thing.

Q. Or the sale of it?

A. Why, I met him once in front of Reed & Brash-ear's (?)—the old store, before the new block was built; I knew him; [2971—2641] he was Street Commissioner; and he says, "Mr. Dwyer, what is the reason I can't sell my claim?" I says, "I didn't know you had a claim." He says, "I have, up on the North Fork," and I says, "Where is it?" And he told me, and I says, "Well, you had better sell it to somebody right away." And he says, "Oh, you are fooling," and he says, "I believe I can sell it to Kettenbach," he says, "I believe I can get him to take up the mortgage on the land," and I says, "For God's sake, do it; if you don't you will have a deficiency claim against you." I understood he sold it, though.

Q. Well, what was the character of the timber on this land?

A. There wasn't any timber on it only a little scrubby stuff. It is up on top of the divide, and there isn't any merchantable timber on it at all.

Q. Do you know Ellsworth M. Harrington?

A. No, sir.

Q. Or Wren Pierce?      A. I don't.

(Testimony of William Dwyer.)

Q. Or Benjamin F. Bashor?      A. I don't.

Q. Did you have anything to do with their acquiring title to timber land?      A. No, sir.

Q. You have no interest in it?      A. No, sir.

Q. Do you know Francis M. Long, John H. Long and Benjamin F. Long?

A. I know John H. Long.

Q. And Bertsell H. Ferris? Did you have anything to do with their acquiring title to timber lands?

A. No, sir.

Q. Or George Ray Robinson?      A. No, sir.  
[2972—2642]

Q. Do you know anything about his acquiring title to a tract of timber land?      A. No, sir.

Q. Do you know—

A. Yes, I do, now. When you come to that George Ray Robinson deal, he tried to sell that timber claim when he was over putting a telephone in my house, and he left the minutes at my house, and when I came home my wife says, "There is a young man here wants to sell his timber claim," and when I saw the minutes I says, "When you see that young man tell him he had better hunt up somebody to buy that, because he couldn't run fast enough to give me a deed to it," and so I guess that was eight years ago.

Q. Do you know Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, and Edgar J. Dammarell?      A. Yes, sir, I know them.

Q. Did you have anything to do with their acquiring title to timber land?

A. I located them, yes, sir.

(Testimony of William Dwyer.)

Q. And just state what connection you had with them.

A. Why, they came up there when I was in the woods. They came in with Jackson O'Keefe, and if I remember right Jackson O'Keefe had spoken to me once before, sometime before, about getting some claims for some boys, and they came up there and we had a general talk. I was around there a couple of days, went through the timber and through the woods there; it was in the fall of the year, I think about this time of the year, possibly about the middle of October, nice weather; and I told them what conditions the land was in, and if they were opened why there would possibly be a chance to get some of them, if they were not all scripped or taken by the State, and I was cruising some of the lands at that time.

Q. And did you hear the evidence of some of the witnesses relative to them paying you a location fee with a hundred dollar bill? [2973—2643]

A. Yes.

Q. What are the facts about that?

A. Some of them might have given me a hundred dollar bill, but I think most of them paid me in gold, if I remember right.

Q. Now, when you borrowed money for an entry-man to make final proof, what would you do in relation to their paying the location fee?

A. I would borrow the full amount to cover the whole thing.

Q. And you frequently turned the whole thing over to them, and they would pay you back the location fee?



(Testimony of William Dwyer.)

A. Yes; that is what they would give their note for. For instance, if they wanted to borrow \$450.00, they would give their note for \$550.00. They would want \$450.00 to pay the land office and their expenses, and they would want \$100.00 to pay their location fee. They would make the note for \$550.00, and pay the land office, and pay me for my location fee, and still they would owe \$550.00. And the same way, they would give a mortgage later on for the full amount.

Q. And did you hear the evidence of Charles Carey? A. Yes, sir.

Q. And what did you have to do with locating him on a timber claim?

A. Why, he was a fellow that knew the country up there, had been up there, and I think Mr. Scott mentioned his name to me—Mr. Malvern Scott—and I asked him if he had been up there, and he said yes, he knew the whole country; and I told him about where I had a relinquishment for sale. “Well,” he says, “that is about where it was, because that is just where I met him the other day on Washington Creek, right there at the bend of Washington Creek, where he was camped, fishing,” and Mr. Scott was working for the State then and he came out over that trail; and I told him what he would have to pay me for the relinquishment—I forget the price now; I think it was about \$150.00 for the relinquishment; I had given the fellow I think \$50.00 for it, and that added to the location fee made \$150.00. [2974—2644]

Q. Now, did you hear his statement wherein he

(Testimony of William Dwyer.)

said that you said "the least said about it the better"?

A. Yes, sir.

Q. How did that come about?

A. Why, it was on account of there being so many locators here, that if they found out there was a relinquishment in existence on a piece of land they would be liable to go up and make application for it.

Q. And what occurred in relation to his getting the money to make proof?

A. I think I loaned Mr. Carey that money myself, or my wife and I. I had some money then that I had made locating, and I think I loaned him the money. He had a shooting-gallery down here on the street, and he burned out, and he stopped me, coming over the river one morning, and I can't just exactly remember all the details; but I am sure that I loaned him that money.

Q. And what kind of security did you take?

A. Well, he wanted to sell the claim, and he couldn't, so I took an option.

Q. How long was that option to run?

A. I think it run about six months.

Q. And was it an option to you, or a contract to sell it? A. Why, it was an option to me.

Q. And after the six months expired, what was done with it?

A. Why, he had a right to sell that too, and we both tried to sell it. Well, it didn't run the six months. He came down before the time had run out, and he said that he had concluded that he would go up into the north part of the State here somewheres,

(Testimony of William Dwyer.)

or up into Northern Washington, somewheres up there, and he wanted to know if we couldn't clean that matter up in some way or other, and I told him I didn't know whether I could sell that claim or not, and I asked him if he had been trying to sell it, and he says, "Oh, no, you can't talk timber up there where I was; I can't sell it." "Well," I said, "I [2975—2645] will see what I can do." So I believe I went over and saw Mr. Kettenbach, or Mr. Kester, one of the two, and I gave them an estimate of that claim and told them what was on it and about what it could be bought for, and I believe the deal was closed, and I took a deed to it.

Q. Now, was there any talk about his selling you the claim before he made his final proof?

A. No, sir.

Q. Did you ever have any agreement with him to buy his right for \$100.00? A. Oh, no.

Q. Did you ever have any agreement with any of these entrymen to buy their right for \$100.00, or any other sum, and pay the expenses of proving up?

A. No, I never did. There was a lot of talk along those lines, but it was in another way. Now they would insist on wanting to know how much they could get for that land if they got it, how much there was in it. "Now, if I take a timber claim and borrow the money, how much is there in it for me?" "Well, I don't know." Every one of them invariably asked that question before they took a claim. I told them, "It will depend on the quality of the timber, and so on and so forth; and it is a small second growth; I

(Testimony of William Dwyer.)

think possibly you can clear up \$100.00, or \$150.00, or \$200.00, or maybe more if you keep it longer." I based my price of that land on the price at that time of scrip—Northern Pacific scrip.

Q. And did you ever have any agreement with anyone that you would buy their land, prior to the time they made their final proof?

A. No, sir, I never did.

Q. Did you ever have any understanding to that effect?      A. No, sir.

Q. Did you hear the evidence of Hi. Lewis and Edward M. Lewis, concerning your locating them on a timber claim?      A. Yes, sir. [2976—2646]

Q. What happened in relation to that? What connection did you have with it?

A. Well, now, I don't know but very little about that Edward M. Lewis deal. What I did know I have kind of forgotten, but I think Hiram Lewis done about all that business. He spoke for his brother, and he said that everybody was taking up timber claims around here, and he thought if he could get a couple for him and his brother why he would take them up. I asked him if he could hold them, and he said he could hold them a spell.

Q. You asked him what?

A. If he could hold them any length of time. He got to talking about the price of them, what they would be worth, etc., and he said yes, he thought he could hold them a spell; he had some credit, and he had some property up there; and I told him well, if he could, he could make some money out of them.

(Testimony of William Dwyer.)

Q. And after he made his final proof do you know of his trying to sell them to anybody?

A. Yes; he was trying to sell them to Joe Malloy, and Charles Williams brought him to me one day; I had an office up there, and Charlie Williams says, "I have a couple of timber claims I want to show you," and he showed me the minutes of them, and I saw in a moment they were claims that I had located.

Mr. GORDON.—Just a moment. Objected to as incompetent, irrelevant and immaterial and hearsay evidence.

WITNESS.—And Hiram Lewis had told me—he met me on the street and told me he had tried to sell them to Joe Malloy. In fact, I told him I guessed if he would dig into the Shevlin-Clarke people he might sell them; but he finally, I guess, didn't sell them to them.

Mr. TANNAHILL.—Q. Did you have any understanding or agreement that you would purchase those lands, or that Kester and Kettenbach would purchase those lands, before he made his final proof? [2977—2647] A. No, sir, I never did.

Q. Did you hear the evidence of Wynn Peffley, wherein he said that you saw him on the street and asked him if he would go up into the timber, or words to that effect? A. Yes.

Q. Did any such conversation as that occur?

A. I never talked to him.

Q. Did you hear the evidence of H. J. Steffey, wherein he stated that he had an understanding with you that if he would get some entrymen to locate on



(Testimony of William Dwyer.)

the land that you would pay them so much for their right and buy the land from them, or words to that effect?      A. Yes, sir.

Q. Did you ever have such a conversation as that with Mr. Steffey?      A. I never did.

Q. Did you ever have Steffey employed?

A. Yes, sir.

Q. During what times, and for what purpose?

A. Oh, he worked off and on for a couple of years, I guess.

Q. Do you know anything about his locating Charles E. Loney, Mary A. Loney, Frank J. Bonney, James T. Jolly, Effie A. Jolly, Charles S. Myers, Jan-nie Myers and Clinton E. Perkins upon timber lands?

A. Why, yes, I remember him saying something about it to me once.

Q. What did he say?

A. He said he had located them.

Q. He had located them?      A. Yes, sir.

Q. What was the next thing?

A. I said, "How much timber is there on them?" "Oh," he says, "they are pretty well covered with timber." I says, "No, they ain't; they can't be." I says, "They lay right within a couple of miles of Pierce, and that land has been cruised and cruised and re-cruised by [2978—2648] the Potlatch Lum-ber Company, by the Wisconsin Log & Lumber Com-pany, and by the Western Lumber Company, and by everybody," and I says, "that ain't good timber land." "Well," he says, "it is pretty good average." And I says, "Well, I know it ain't. I'll tell you

(Testimony of William Dwyer.)

what you might have done with that land: If you could have located the best forties and scripped it you could probably have got out whole on it.” “Well,” he says, “you might go and look at it. Those are all friends of mine, and I told them I would locate them.”

Q. Now, was that before or after they had made final proof?

A. Why, I think it was about the time they made final proof.

Q. About the time they made final proof?

A. Yes, sir. There was some of those claims, now, later on—there was two of those claims that was up on the road, and we had quite an argument about them claims. I just absolutely refused to buy them at all. I says, “Any man that would go to work and locate such timber lands as those, and then try to sell them!”— “Well,” he says, “I went good for them people”; he says, “I loaned them the money,” and he says, “I am going to sell them.” I said, “All right; you can’t sell them with my estimate, because I ain’t going to O. K. any estimate on them lands.”

Q. And then what happened?

A. Well, he sold them to Kester.

Q. And—

A. We had some trouble, too, also, about the Perkins claim. Mr. Kester said I O. K.’d them, but I really didn’t O. K. He bought that, too. That was that claim he paid \$1,250.00 for. He said it was as good as the Dell Maris claim. Well, I knew it wasn’t. I just wanted to correct that mistake. I didn’t O. K. that claim.

(Testimony of William Dwyer.)

Q. Did you hear Steffey's statement wherein he said he had a conversation with you in the presence of Kester before these entrymen filed, that one of these claims was as good as the Dell Maris claim, and that you said if it was you would have a champagne supper, or words to [2979—2649] that effect?

A. Yes.

Q. Now, what was there about that?

A. Oh, no; that wasn't—that was the day that he sold that claim.

Q. That he sold the Perkins claim? A. Yes.

Q. After they had made their final proof?

A. Yes, after they had made their final proof.

Q. And did you have any understanding or agreement with Steffey for the purchase of these claims, before the entrymen made final proof?

A. No, sir, I didn't.

Q. Now, did you ever at any time ever enter into a conspiracy, combination or understanding with Kester and Kettenbach, or anyone else, that you would defraud the United States out of any timber lands, or anything else? A. No, sir.

Q. And have you ever had any connection with Kester and Kettenbach in the acquisition of timber lands, further than working for them for a salary, or for wages, or for a commission?

A. That's all, the same as other people that I have worked for.

Q. Did you hear the evidence of H. J. Steffey wherein he stated that you used an expression of "up the creeking them" when you located them on timber

(Testimony of William Dwyer.)

land without taking them to the land?

A. Yes, sir.

Q. What is there about that, if anything?

A. I never heard it before. I guess he heard that up Priest River.

Q. Did you ever locate anyone on a tract of timber land without taking them upon the land?

A. No, sir, I never did. Or on a poor one, either. If I didn't have a good one I didn't locate them at all.  
[2980—2650]

Q. Did you hear Steffey's evidence relative to the location of Margaret Goldsmith and Blakeman?

A. Yes, sir.

Q. Now, what was the circumstances in connection with that?

A. Why, I got him to take a pack-horse and take those people out and show them that land. It was right on the road, and he did—I supposed—and I sold them the relinquishments, and they filed them, and the circumstances of their proving up I don't just know. I don't believe I was a witness, even; I don't know that I was. I don't think I was. But I never knew anything about their not being on the land till the next summer.

Q. And what was the circumstances of you finding it out?

A. Why, I was up there on the fire patrol, watching the fire, and Steffey came in there one day and he was awfully excited, and he said that there was a fellow by the name of Hinds, from Kendrick, had come down here and protested Mrs. Andrews' claim, or in

(Testimony of William Dwyer.)

regard to their being on the claim, and he said that they had J. B. Anderson and Miles Johnson, and he says, "They are all around there," and he says, "I am afraid they will indict me." I says, "What did you do to be indicted for?" "Well," he says, "I didn't show them on that land." I says, "Why didn't you?" "Oh," he says, "we never did." He says, "Jack Maloney and I, we never showed anybody land that we located them on." I says, "Do you mean to tell me you didn't show Mrs. Goldsmith and Blakeman that land?" He looked about a minute, and he says, "By God, Bill, I didn't. I never told you before, but you ought to have known it by the length of time it took me." "Well," I says, "you are certainly a daisy, to swear to a lie, when that land is right on the road," and that is the first I knew that they hadn't been on the land.

Q. Did you ever have anything to do with locating Jane Andrews?     A. No.

Q. Or selling the relinquishment?     A. No.  
[2981—2651]

Q. Or the purchase of the land?

A. No, I didn't.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [2982—2652]



On Tuesday, the 18th day of October, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of Elisha N. (Nat.) Brown, for Defendants.]**

ELISHA N. (NAT.) BROWN, a witness heretofore called and duly sworn, being recalled in behalf of the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?      A. Elisha N. Brown.

Q. You are the same E. N. Brown who was heretofore sworn and testified in this case for the Government, are you?      A. Yes, sir.

Q. Are you acquainted with Clarence W. Robnett?

A. Yes, sir.

Q. Are you acquainted with George H. Kester?

A. Yes, sir.

Q. And William F. Kettenbach and William Dwyer?      A. Yes, sir.

Q. Mr. Brown, when Clarence W. Robnett was on the stand as a witness for the Government at Spokane, at pages 1819, 1820, 1821, 1822 and 1823, he testified to certain matters that took place in your presence, and a certain conversation in which you joined, or in which you was a party. On page 1819 Clarence Robnett testified, in response to the following question:

“Q. I want any statement you heard Kester and Kettenbach make before that, before this one you have just testified to.

“A. Well, I heard them discuss the matter with

(Testimony of Elisha N. (Nat.) Brown.)

Nat. Brown, in [2983—2653] regards to certain entrymen at Moscow who had filed on timber claims and sold their claims, once or twice, when Mr. Brown was in the bank there.

“Q. What was said?

“A. I don't recall the names of the entrymen, but they spoke of certain parties at Moscow,—I think there was a man and his wife up there had taken up a timber claim; yes, there was a man and his wife, each one of them had taken up a timber claim, and the two of them had sold them for \$10,000.00, \$5,000.00 apiece, old growth white pine. That matter was discussed, and also a great many other entrymen around Moscow.”

Did you have any such conversation as that with Mr. Kester and Mr. Kettenbach in the bank?

A. No, sir.

Q. Or any other conversation in the presence of Mr. Robnett? A. No, sir.

Q. He also testified, in response to the following question:

“Q. Whereabouts in the bank did that take place?

“A. Mr. Brown was standing outside of the window, and Mr. Kester and Mr. Kettenbach were talking to him through the Assistant Cashier's window.

“Q. Both of them were inside the cashier's cage, were they?

“A. There was no cage; they was inside of the interior of the bank working-room, and Mr. Brown was out in the lobby, opposite the assistant cashier's window.

(Testimony of Elisha N. (Nat.) Brown.)

“Q. Who else was in the bank at that time?

“A. Why, I don’t recall that there was particularly anybody in the bank; this was during banking hours.

“Q. Well, now, repeat anything else that you can remember that was said at that time. As I understand you, Nat. Brown was telling them about some man and his wife up at Moscow that had each taken up a timber claim? [2984—2654] A. Yes, sir.

“Q. An old growth white pine claim?

“A. Yes, sir.

“Q. And they had sold it for \$10,000.00, \$5,000.00 a claim? A. Yes, sir.

“Q. And they had made a good profit on it?

“A. Yes, sir.

“Q. What else was said?

“A. They was discussing relative to some of the townships up in the Clearwater section that were still on unsurveyed land, and I believe Nat. Brown had either been up there or was going up there on this trip, and my recollection is that he stated that he was locating people on this unsurveyed land.”

Did any such conversation as that take place?

A. Not that I remember of.

Q. “Question. Nat. Brown was?

“A. Yes; that is, he had a number of claims up there and he was putting people on them and locating them.”

Did you have any such conversation as that with Kester and Kettenbach, in the presence of Robnett, or at all?

(Testimony of Elisha N. (Nat.) Brown.)

A. I don't remember of any such conversation.

Q. "Question. What else was said?

"A. The character of the timber was discussed.

"Q. What else was said?

"A. Why, also the time for the—when these townships would likely be thrown open for filing, and how long a person would be apt to have to stay to hold their claims down that went up there, and the value of the timber."

State whether or not you had any such conversation as that.

A. I didn't understand that, Mr. Tannahill.

(The reporter repeated the last question.)

A. I don't remember any such conversation.

[2985—2655]

Q. On page 1822 Mr. Robnett also testified, in response to the following question:

"Q. How many did he say he had?

"A. He didn't say." Referring to yourself, Mr. Brown.

"Q. But he said he had located them on this—

"A. He had a number of claims and was locating people up there."

State whether or not you had any such conversation as that with Kester and Kettenbach.

A. No, sir.

Q. On page 1823 Mr. Robnett also testifies:

"Q. Well, how many did you gather, from the conversation, that he had located up there?

"A. That there was a great many people from Moscow had gone in there.

(Testimony of Elisha N. (Nat.) Brown.)

“Q. A great many people from Moscow?

“A. Yes, sir, a great many people.

“Q. Did he say anything about the kind of timber it was?

“A. Yes; the timber was all nice timber, running a large percentage of white pine.

“Q. How much did he say the claims were worth?

“A. He said there was claims up there by the time a person proved up on them would be worth from four to six thousand dollars.”

Did you have any such conversation as that with Kester and Kettenbach?     A. No, sir.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Brown, you know Mr. George H. Kester and Mr. William F. Kettenbach rather intimately, do you?     A. Yes, sir.

Q. And you have been in the timber business a number of years?     A. Yes, sir. [2986—2656]

Q. And you have been at the bank and discussed various matters with them, have you not?

A. Not relative to timber very much, Mr. Gordon.

Q. But you have been to the bank and talked matters over with them? I am not asking you now about the timber, but you have been in the bank and talked with George Kester and Will. Kettenbach?

A. Yes, sir.

Q. Would it have been anything unusual for you to have talked about the value of timber in certain localities?     A. Why, yes, I think it would.

Q. Why?



(Testimony of Elisha N. (Nat.) Brown.)

A. Well, they were competitors of ours—we considered them so, at any rate.

Q. And you knew when all the land was to be thrown open, didn't you?     A. No, sir.

Q. Do you mean to say that after the State had made application, you didn't know every application that the State had made for a survey?

A. No, sir, I didn't.

Q. You didn't know anything about when the State made applications?

A. Some of them we knew about.

Q. And after it made application, you knew how long it would be before it would be thrown open for entry, didn't you?

A. Well, 60 days after this land was surveyed and thrown open—it would be 60 days; the State would have 60 days in which to select their timber.

Q. And then it would be opened to the public after that 60 days had expired?

A. Yes, sir, I understood so.

Q. Do you know of any white pine quarter sections that were worth from four to six thousand dollars a quarter section?     [2987—2657]     A. Yes, sir.

Q. And you lived at Moscow for several years?

A. Yes, sir.

Q. And did you know at that time that people in that vicinity were locating on timber claims?

A. Yes, sir.

Q. Did you, or anybody that was employed by or employed under you, ever locate any persons on timber claims?     A. Yes, sir.

Q. Do you know how many?

(Testimony of Elisha N. (Nat.) Brown.)

A. I couldn't tell you. I was in the locating business from 1894 until the fall of '99.

Q. '99? A. Yes, sir.

Q. Not 1909? A. No—'99.

Q. Your company bought a number of claims from Kester and Kettenbach, did it not?

A. I don't know of any, Mr. Gordon.

Q. Did you ever buy any from either one of them?

A. No, sir, not that I know of.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. These quarter sections that were worth from five to six thousand dollars were all old growth white pine, were they not, Mr. Brown?

A. Yes, sir, all to my knowledge that I would point out would be.

Q. The second growth timber you wouldn't consider worth that much?

A. Well, when we first commenced to locate scrip and locate homesteaders in this country we didn't locate them on second growth, and we didn't locate scrip on second growth at that time—if we knew it.  
[2988—2658]

**[Testimony of William Dwyer, for Defendants  
(Recalled).]**

WILLIAM DWYER, a witness heretofore called by the defendants and duly sworn, being recalled by the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. Mr. Dwyer, when we closed on yesterday even-

(Testimony of William Dwyer.)

ing, as I remember it, I was asking you concerning some evidence that was given by Mr. Steffey, as to the Steffey entries. I will ask you if you had some trouble with Mr. Steffey in making a final settlement with him?

A. Why, yes. I didn't have any particular trouble with him, myself.

Q. Well, just what occurred in relation to that?

A. Why, I owed him for doing some work—

Mr. GORDON.—I object to this on the ground that it is incompetent, irrelevant and immaterial.

WITNESS.— —and I paid him, and in a day or two afterwards why Mr. Kettenbach asked me if I owed Mr. Steffey anything, and I told him no. I said, "Why?" "Well," he said, "if you did," he said, "I want you to pay me; he borrowed some money from me." I said, "I don't owe him anything; I have settled up with him."

Q. Now, was anything said about you owing him at that time?

A. What? When I settled up with him?

Q. No; when Mr. Kettenbach spoke to you about Steffey borrowing some money from him?

A. He said that I owed him some, and when he settled up with him he would pay it back to him.

Q. Oh! Go ahead.

A. As I understood it, and so the matter run along, and finally I called up Mr. Steffey by phone two or three times, and one day he came down here and he was in town for several days, and finally one day he came down and I asked him about that matter, and

(Testimony of William Dwyer.)

me settling up with him in full, and he said he didn't tell Kettenbach so; he said he [2989—2659] borrowed some money of him, but he didn't remember telling him that. "Well," I said, "you had better come over and see Mr. Kettenbach." "Well," he says, "I will be over in a while." So he came over, and then he started in to make some comment about being indicted, and about that he had never been used right on any lands that he sold here; I had cut him down on the price, and he thought he had something coming, and talked along generally. It was news to me and Mr. Kettenbach. I didn't know what to say to him, and I said to him it seemed to me he was kind of starting in for a hold up; it looked to me like a hold up. That is all the trouble I had with him. He and I have never spoken since that day, so if you call that trouble—but he repudiated his loans that he got from Mr. Kester, and in fact I went good for the loans—in a way; I told Mr. Kester I thought he was all right; and one time he had an overdraft there, and I came to him and I said, "Say, you have an overdraft at the bank of \$300.00; did you know it, and you will have to give them security." At that time he had lands up there, some homestead land, and some pretty valuable land; he was considered fairly responsible; and so he says, "All right, I will go over and fix it up." So he went over and fixed it up, and he came back and said, "Why, that was all right," he said, "I made a mistake in my book, in figuring it," and he said, "I was playing cards a little last night," and he says, "I got a \$350.00 overdraft"; he

(Testimony of William Dwyer.)

said, "I didn't think it was so much," and he said, "Kester used me all right," he said, "I expected I would have to give a mortgage on my timber land, but," he said, "he didn't ask me for any; he took my note."

Mr. GORDON.—This all goes in under my objection.

Mr. TANNAHILL.—Yes.

Mr. DWYER.—So that passed on, and he finally got another overdraft, and as I understand he settled it the same way, and then he borrowed some more money that I didn't know anything about particularly, only he told me he had borrowed the money to loan those people on those lands that I wouldn't O. K., and I said, "Well, that's all right, you [2990—2660] will probably have it to pay unless you can sell it to somebody else." Well, then he signed his timber claims over to John Gaffney, and then John Gaffney signed them over to Cole—Herbert Cole—and Cole deeded them to the Clearwater Timber Company. So he never did pay any of his obligations that he got from Mr. Kester, that I know of, and he never paid the \$50.00 that he got from Mr. Kettenbach, and I had his receipt in full for all that I owed him, in full—a day or two before he got the money from Mr. Kettenbach.

Mr. TANNAHILL.—Q. Did you hear his evidence wherein he stated that the only trouble you had was that you tried to sell his barn at Pierce?

A. Yes, sir.

Q. What was that?



(Testimony of William Dwyer.)

A. Why, that was a story he put up, I guess, to help him holler a little bit. He don't own any part of that barn. There was \$95.00 worth of feed that he claims he owed to other people; but I notice it was never put back.

Q. Did you hear the evidence of Claud Gatch, wherein he said that you stated there was something like \$100,000.00 of those circle K. checks?

A. Yes, sir.

Q. What are the facts about that?

A. Why, it was a mistake somewhere, with either me or Mr. Gatch, because I didn't mean that, however. That was the amount of land that Mr. Kettenbach had bought up there.

A. And if you made the statement that there was \$100,000.00 of circle K. checks that was an error?

A. That was an error, yes, sir, because I said \$100,000.00 or upwards that he had invested in land, and I gathered that from talking with Mr. Kettenbach a few days before that. He approximately told me about how much he had invested up there.

Q. You have heard the evidence of the various witnesses relative [2991—2661] to this famous line-up of April 24th, 1904, have you? A. Yes, sir.

Q. Do you remember about how many people were in that line?

A. I think there was 130 or 140.

Q. Do you remember how many of them there was in that line that you had located?

A. Not any. Of the—?

Q. Of April 24th?

(Testimony of William Dwyer.)

A. Oh—April 24th? Oh! I made a mistake—I thought you meant February 24th.

Q. Now, how many was in that line-up?

A. Why, in that line-up of April 24th there was about—oh, probably 45 to 60, somewheres along there—50 to 60.

Q. And how many of those was there that you had located?

A. Oh, I guess I located 18 or 20 of them.

Q. Now, how many of those that you located did Kester and Kettenbach buy their lands?

A. Oh, about six or eight, I guess, was all.

Q. Now, you heard the evidence of Mr. Goldsmith concerning your estimating State timber, and there was some evidence as to how you worked and followed a trail in going in and coming out. I will ask you what the condition of the country was there at that time?

A. Well, there wasn't any trail. The snow was from four to ten feet deep in there.

Q. And how did you get around?

A. Well, you had to get around from your former knowledge of the country. In some instances the trail blazes, even, was covered up with snow.

Q. How did you travel? A. On snowshoes.

Q. On snowshoes? A. Yes, sir. [2992—2662]

Q. How did you carry your provisions in there?

A. In pack straps on our backs.

Q. Did you see these notices that Mr. Goldsmith testified he delivered to Mr. Goodwin and Mr. O'Fallon? A. Yes, sir.

(Testimony of William Dwyer.)

Q. Describe those notices.

A. Why, there was a great many of them was printed—in a printed form, and with the blanks, spaces left for the township and range, and the township and range was wrote on; but there was a place left for figures, and blank places for the name, and blank places for the witness down at the lower left-hand corner. They were printed on a cloth.

Q. And by whom were they witnessed?

A. They were witnessed by S. P. Fitzgerald, and J. C. Jansen, John Maloney, O. V. Niles, Walter Felter, and Charles W. Kays, and some others; I don't just remember now.

Q. About how many notices did Mr. Goldsmith bring out with him, if you know?

A. Why, I think in all there was about—oh, there must have been 60 or 70—75 of them, maybe.

Q. Did you hear the evidence of Frank Morrison, wherein he stated that you told him you wanted him to go in with you and put up the money for a grubstake, and that you would divide your share of the land with him; that you got 40 acres out of every 160 that you located? A. I did, yes, sir.

Q. State whether or not you had any such conversation as that with him. A. I never did.

Q. Regarding the locating of timber?

A. No, sir.

Q. On timber lands?

A. No, sir. [2993—2663]

Q. And did you hear his evidence wherein he stated that he had had no trouble with you along in 1901 and

(Testimony of William Dwyer.)

1902? A. Yes, sir.

Q. What is the facts about that?

A. Why, in 1901, in the early part of 1901 we had some trouble over there, some lodge trouble, and trouble over a horse.

Q. And trouble over a horse?

A. Some lodge troubles, and some trouble over a horse. He was pasturing a horse for me, and the horse disappeared, and people that was pretty well acquainted with Morrison told me he knew just exactly when he disappeared, and we had some trouble about it. Of course, I was a stranger in the country then, and I didn't know him.

Q. I will ask you if you and Mr. Morrison have been on speaking terms since that time?

A. I have never spoken to him since the early part of 1901. He has had some trouble—that is—imaginary trouble; he was up in the woods and looked over some of that land in the fall of 1903, and he came over here and was too late for the line-up, him and Mr. Elliott and Mr. Blair, his two nephews, and he had made some comments about the land being gobbled up—talked something about it. It was directed to me, although I didn't say anything to him at the time.

Mr. GORDON.—We object to that on the ground that it is incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. What disposition have you and Kittie E. Dwyer made of the lands which was purchased by you and Kittie E. Dwyer?

A. Why, we still own them.

(Testimony of William Dwyer.)

Q. Have you transferred them to anyone?

A. Yes, they are transferred; that is, there is trust deeds given to the Idaho Trust Company for money loaned.

Q. How much money did you borrow from the Idaho Trust Company?

A. Well, the original loan, I think, was about \$12,000.00, and [2994—2664] then the carrying charges and interest since, I think the loan amounts now to about \$16,000.00 or \$17,000.00.

Q. And that is all a *bona fide* loan, is it?

A. It is, yes, sir.

Q. And you owe that amount to the Idaho Trust Company?     A. Yes, sir.

Q. And these lands are held as security for that loan?

A. Yes, sir, those lands with other properties.

Q. Did you ever tell any officer or director of the Idaho Trust Company how you acquired these lands?

A. No, sir.

Q. Or anything about your arrangements with the original entrymen?     A. No, sir.

Q. What information did the Idaho Trust Company require of you before taking the deeds for these lands?

A. Why, an abstract of title I believe is all they asked.

Q. You furnished them the abstract of title?

A. Yes, sir. I would correct one place there: I said the interest and the carrying charges; I mean by that the taxes also; that the taxes is included in



(Testimony of William Dwyer.)

the carrying charges.

Q. Do you know Clarence W. Robnett?

A. Yes, sir.

Q. How long have you known him?

A. Oh, about ten years, I guess—10 or 11—that is, to be acquainted with him.

Q. On page 1654 of the transcript Clarence W. Robnett testifies in response to the following question:

“Q. Who were the parties to this discussion?

“A. Will. Kettenbach and Mr. Dwyer.

“Q. Do you remember whether Mr. Kester was there or not?

“A. Well, now, there was several at one conversation that took [2995—2665] place in Mr. Kettenbach's office, where Mr. Dwyer and Mr. Kettenbach and Mr. Kester were present, all three of them.

“Q. Now, who was the spokesman at that conversation? Tell the conversation as well as you can.

“A. They were discussing in regards to the homesteads, homestead entries of the timber, that were just thrown open, and Bill Dwyer stated that he was going to contest all those entrymen and locate them, and Will. Kettenbach asked if there was any limitation to contests, to how many contests one party could file, and Mr. Dwyer said no, there wasn't, he could file as many contests as he wanted to, and he could put whoever he wanted on the timber if he won out, and Will. told him to go ahead and contest them and get all the claims that he could.”

Did you have any such conversation as that?

(Testimony of William Dwyer.)

A. No, sir.

Q. Did you ever have any conversation with Mr. Kester or Mr. Kettenbach concerning the filing of these contests?     A. I did not.

Q. Robnett also testified, on page 1654:

“Q. Did Mr. Dwyer discuss the character of these entrymen, or how they had located on the homesteads?

“A. He said, ‘They are simply holding down the claims under the homestead to beat the State out, to keep anybody else out, and as soon as—they intend to relinquish and file a timber and stone entry on it, and I am just going to beat them to it before they get a chance to relinquish their homestead filing.’ ”

Did you have any such conversation as that?

A. No, sir.

Q. On page 1655 Robnett also testifies:

“Q. Now, after Mr. Kettenbach had made the assertion and asked the question that you have detailed here, did you state whether or not Mr. Dwyer said anything as to what he was going to do with the claims that it had been suggested that contests be filed upon? [2996—2666]

“A. He says, ‘I have got plenty of entrymen to put on all the good claims I can get and contest them out,’ and he says, ‘They don’t know, when you file contests, whether I am going to locate people on them or file scrip on them.’ ”

Did you have any such conversation as that?

A. No, sir, I didn’t.

Q. “Question. Was anything said at that time

(Testimony of William Dwyer.)

relative to the locality of lands that were to be involved in these contests?

“A. Referring to the contests that come in, about six or eight, I believe.

“Q. Do you remember when those were to come into the market, I mean, to be opened to entry?

“A. Along in the spring of 1904.”

Now, did you have any such conversation as that, regarding the time that these lands would come into market, or the time the contests were filed?

A. I did not; no, sir.

Q. On page 1656 Mr. Robnett also testifies:

“Q. Do you remember any further conversation between any of the defendants relative to these contests?

“A. There was another conversation that took place at the Cashier's window.

“Q. When was that?

“A. That was a short time after this. Will. Kettenbach and I were standing there talking, along during the noon hour, between twelve and one, and Mr. Dwyer came into the bank, and Will. says, ‘What have you been doing to-day, Bill?’ And he says, ‘I have been filing contests.’ ‘How many did you file?’ ‘Fourteen or eighteen.’ And I spoke up and I says, ‘What are going to do, Bill,—take all these homesteads up there?’ And he says, ‘Yes,’ he says, ‘I will file forty more if it is necessary.’”

Did you have any such conversation as that?  
[2997—2667]

A. No, sir, not in the bank. I had a conversa-

(Testimony of William Dwyer.)

tion with Mr. Robnett outside one day. He called me as I was going to the land office, and he said, "Say, are you going to contest all them homesteads up there?" I says, "I don't know; what do you want to know for?" "Well," he says, "I am interested in one up there," he says; "Charlie Jansen located up there," he says, "on 8 and 9."

Q. And that wasn't in the bank? A. Eh?

Q. That wasn't in the bank? A. No.

Q. And wasn't in the presence of Kester and Kettenbach?

A. No—just him and I. He just mentioned it to me. I told him I felt awful sorry for him, because that man filed on it just after telling me he never saw the land, and didn't know whether there was a cabin on there or not.

Mr. GORDON.—Let me ask him a question:

Q. How high are those cabins that they have on those homesteads that you refer to, on which notices were filed?

A. Oh, they were about four and a half to six feet high; according to how handy the timber was, and all.

Mr. TANNAHILL.—Q. On page 1668 Mr. Robnett testifies, in response to the following questions:

"A. Well, Mr. Dwyer came in from the timber a few days ahead of Mr. Goldsmith, a day or two, and he came in there—

"Q. In where?

"A. In Mr. Kettenbach's private office.

"Q. Yes?

(Testimony of William Dwyer.)

“A. And Will. says, ‘Well, hello, Bill, when did you get back?’ He says ‘I have just got in from the train.’ He says, ‘How is everything going?’ He says ‘All right.’ He says, ‘Have you got memorandums made of the land you want out—not selected by the State?’ and [2998—2668] he says, ‘Yes.’ He says, ‘Get them up in shape and I will see Goldsmith and give them to him.’ ”

Did any such conversation as that occur?

A. No, sir.

Q. Now, who came down first from the timber, you or Mr. Goldsmith?

A. Why, I think we came together, but Mr. Goldsmith got off at home; he didn’t come down to Lewiston.

Q. I will ask you, Mr. Dwyer, if you ever at any time had any understanding or agreement or contract of any kind or nature with Kester or Kettenbach, whereby you were to acquire timber lands together? A. No, sir.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Dwyer, you have stated that the first connection you had with Kester and Kettenbach relative to working for them was when you were cruising timber land for Kester and Kettenbach on the Potlatch and the St. Maries River; is that correct?

A. Yes, sir, I think so.

Q. Do you remember what year that was?

A. I think I looked at some land for Mr. Kettenbach in 1902; I think it was 1902.



(Testimony of William Dwyer.)

Q. And do you remember what town that was?

A. Why, I think it was 42-1 east.

Q. And how much land did you look over at that time, and how long were you employed?

A. Why, it was only a short job; it was some lands that he had bought from—somebody over there, I forget the fellow's name now; but he bought some land from somebody.

Q. Do you remember how many acres was in that piece that they bought and that you cruised?

A. Why, I couldn't just tell now; there wasn't much of it; there [2999—2669] wasn't a section I don't think. Whitney was the man's name that he bought the land from, I remember, because I went down to the land with Whitney. I think it was ten forties, if I remember right.

Q. And they paid you by the day for that service? A. Yes, sir.

Q. Would you mind telling how much the day payment was?

A. Well, sir, I received \$6.00 a day.

Q. You say that Mr. Goldsmith came to your house to see if you couldn't recommend some woodsman and some man that could travel on the snow, to go into the timber; is that correct?

A. Yes, sir.

Q. And you referred him to Mr. Bliss at first?

A. Yes, sir.

Q. And then did you tell him you would go at the same time? A. No, sir, I didn't.

Q. And did you go into the timber with Mr. Bliss

(Testimony of William Dwyer.)

and Mr. Goldsmith? A. Yes, sir.

Q. Did you both start together?

A. No; I went a little in advance and packed some supplies for a few days in advance of Mr. Goldsmith. He was waiting for the Boise man.

Q. And did you go all the way into the timber before Goldsmith did?

A. No, sir; I went as far as the first stopping-place, at Hatch's.

Q. And then you waited for him?

A. Yes, I waited, but the men kept right on going in, back and forth, and took a pack load and came back and got another pack load and went back in there.

Q. Now, that was some time in March. Now, do you remember what time in March it was—along about the middle of March?

A. Why, I think it was close to the middle of March, Mr. Gordon, [3000—2670] at that time.

Q. And I understood you to say that there were no trails; that the snow was very deep?

A. Yes, sir.

Q. Was that all the way in, and in the timber was the snow that deep? A. Yes, sir.

Q. And how deep was it in the deepest parts?

A. Well, sir, there was ten feet of snow on Washington Creek that spring.

Q. And how late did that snow remain there to that depth?

A. Well, it went off pretty well in the open places before we came out; but in the thick timber there was

(Testimony of William Dwyer.)

still pretty deep snow there.

Q. And where it had not gone off in the bare places or the open places, it was pretty nearly as deep; as when you went in there, was it not?

A. Yes, sir.

Q. Now, you had been all up through that timber and cruised it before you were employed by Mr. Goldsmith, had you not?      A. Yes, sir.

Q. I understood you to say that you had cruised it some time in 1903, before the surveys were made?

A. Well, the surveys was made in 1903. I was up there the year before that—the fall before. I was up there two seasons, in that upper country, and up the North Fork, and cruised in through there and out by the way of what we call the Oro Grand.

Q. Now, when you went into the timber in March, 1904, the Skuse scrip that you have referred to had not been filed, had it? It had not been presented to the land office?

A. No, sir. That is, when I went in?

Q. Yes. [3001—2671]      A. In March?

Q. Yes.

A. I wouldn't say, but my recollection is that it wasn't. If it was, I didn't know it.

Q. And it wasn't filed till the 15th of April? It wasn't presented to the land office till the 15th of April?

A. I know it was filed when we came out. It was on the plat books, marked off the plats, when we came out.

(Testimony of William Dwyer.)

Q. It had never been accepted or laid; it was rejected?

A. Well, the appeal had never been perfected.

Q. Well, but then it has to be rejected before there is an appeal, doesn't it?      A. Yes, sir.

Q. So, as I understand, it had never been laid—what we speak of being laid? It had been filed, and rejected immediately upon the filing?

A. It was laid for all intents and purposes. If anybody hadn't re-applied for the land, the scrip would have held.

Q. Yes; but wasn't it rejected before you came down and made your filing?

A. Yes, sir. That is, it was rejected as to conflicting with the State; it wasn't rejected as to conflicting with anybody only the State.

Q. Now, in what townships did you go over in your selections for the State?

A. 38-5, 38-6, and 37-6.

Q. Did you go into 39 at all?

A. Mr. Bliss and Scott I think did, that was working with us.

Q. That plat that you had here, what was that town?      A. That was later on. That was 39-4.

Q. And you had cruised and estimated all of 39-5 and 6, though, hadn't you? [3002—2672]

A. 38-5 and 38-6 you mean?

Q. Well, I say, hadn't you already cruised—excuse me. You had cruised and estimated with Mr. Goldsmith 38-5 and 6?      A. Yes, sir, and 37-6.

Q. That plat that you furnished here, is that

(Testimony of William Dwyer.)

39-4? A. Yes, sir.

Q. And when was that made?

A. That was made the following summer, I think in June.

Q. That was made, then, after the State selections?

A. No. That township wasn't open at the same time that the rest of them were. That township wasn't open for filing till the 16th or 18th of June. The other townships was open in April—the 24th.

Q. When did you cruise that land in 39-4?

A. Well, I had been into 39-4 two or three different times. I guess I gave it the most thorough cruising the summer before—1903.

Q. The summer of 1903? A. Yes, sir.

Q. And when did you make the plat which you have put in evidence here? A. I made it in 1904.

Q. In the summer of 1904? A. Yes, sir.

Q. Did you make it before—just before the land was thrown open in June, did I understand you to say?

A. I think I made that plat in the woods up there in 39-4—up at the Big Island.

Q. Now, do you remember what month you made it in?

A. I made it in June. I took that plat—to be more fully understood—I took that plat and visited those homesteaders, and some of them was living in there, and I marked their homesteads right on the plat at the time while I was up in the woods.

Q. Did Mr. Kester tell you that Steffey had re-



(Testimony of William Dwyer.)

pudiated the loans [3003—2673] that he had made him?

A. No, I don't think he did. I believe I mentioned it first to Mr. Kester. I told him that he had transferred his security, I see, and by the way he was shaping himself I thought that he would possibly have to hold the sack for them notes and overdraft notes; and it turned out as I anticipated—that is, up to date he is holding them.

Q. Now, you remember the circumstance of making the statement to Mr. Gatch and Mr. O'Blenness and myself relative to the circle K. checks.

A. I do, yes, sir.

Q. Now, wasn't the circumstance about like this: That I had been looking in the bank for the circle K. checks, and that you were asked if you had any of them in your private safety deposit box at the bank, and that you said you would come and see, and you came in the bank and opened up your safety deposit box for the purpose of showing whether there was any circle K. checks in it?

A. Why, I opened up the box to show you that there wasn't any in there; but I understood that they had posted a notice on it not to be opened, and I said, "I may want to get in that box, and before the people in authority had gone away I wanted it removed."

Q. Now, wasn't that the only purpose that you came to the bank that day for, that you opened that box to show whether there was any circle K. checks in it?

(Testimony of William Dwyer.)

A. No. I didn't know what was in it. I didn't know what you wanted.

Q. I know; but didn't I meet you on the street and ask you about it, and you said you would come into the bank and open the box to see whether there was any in there or not?

A. I don't remember it that way, Mr. Gordon.

Q. Now, what else did I have to do with you except to ask you about the circle K. checks?

A. You asked me about the circle checks when you went in, that's [3004—2674] true; but my purpose in going in there was to get that box so that you people in authority wouldn't leave it so I couldn't get inside it.

Q. And don't you know that no inquiry was made relative to timber at all?

A. You asked me how much timber—how much I had bought for Mr. Kettenbach in the Clearwater country, and I told you, if I remember right, Mr. Gordon, that Mr. Kettenbach had \$100,000.00 or upwards—\$100,000.00 or upwards of timber land in the Clearwater country.

Q. Now, wasn't the question I asked you, what was the aggregate amount of the circle K. checks that you used, and you said \$100,000.00 or upwards?

A. Well, I misunderstood you, because the circle K. checks, there wasn't \$20,000.00 of them drawn.

Q. Now, what became of the circle K. checks?

A. Why, I don't call them a check, Mr. Gordon. They were simply a kind of a draft on Mr. Kester and Mr. Kettenbach.

(Testimony of William Dwyer.)

Q. They were on the regular blank form of the Lewiston National Bank check?

A. Yes; but the Lewiston National Bank didn't cash them. They were turned over to Mr. Kester and Mr. Kettenbach, and they took care of them.

Q. They went through the window the same as any other check, didn't they?

A. Well, the same as a draft, I suppose. If there was a draft went through the window on a customer and the customer had O. K.'d it in advance, I suppose it would be cashed, wouldn't it?

Q. But there is a difference between a check and a draft, and those were on a regular blank form Lewiston National Bank check, and the only difference between them and a check was that you had a circle K. on it?

A. Well, that, Mr. Gordon, was a memoranda that was to show that they were used in the land business for Mr. Kester and Mr. Kettenbach, [3005—2675] and it was a draft on them. If I bought any land for them I would give a man a check.

Q. Didn't you use them for other purposes besides buying land for them?

A. No, sir, not that I know of, only when I was estimating land for them, and watching fires up there in the fire patrol I used them—all things connected with it.

Q. What was the amount of those circle K. checks, as you now remember it?

A. Oh, I couldn't tell, but in the aggregate I would say right off handed that there was possibly—well,

(Testimony of William Dwyer.)

there might have been \$25,000.00, but I wouldn't put it any more; I would think they would be less.

Q. Since your talk with me have you ever told anybody that there was \$50,000.00 or \$60,000.00 worth of them? A. No, sir.

Q. Have you ever told Mr. Commerford, sitting here, that there was \$60,000.00—an aggregate of \$60,000.00 worth of circle K. checks?

Q. No, sir.

Q. Do you remember having a talk with Mr. Commerford here just after your return from Portland the latter part of last month? A. No, sir.

Q. You don't remember even having a conversation with him about the circle K. checks?

A. No, sir, I never talked with him about the circle K. checks. I never made that statement to anybody.

Q. And would you say that you didn't tell him that there was between \$50,000.00 and \$60,000.00 worth of those circle K. checks, and you thought the aggregate amount of them would be about \$50,000.00 or \$60,000.00? A. No, sir.

Q. Now, when you cruised and estimated this timber in 38-5 and 6, [3006—2676] and was it 37-5 and 6 also that you cruised, and in 39-5 and 6; what was your purpose in cruising that?

A. You mean when I first went up there to cruise it?

Q. Yes.

A. Why, I cruised it with a view of locating people on it.

(Testimony of William Dwyer.)

Q. And you did locate a number of persons in 38-5 and 6, did you not?     A. Yes, sir.

Q. And you located those people in the fall of 1903, did you not, in October?

A. I showed them over the land.

Q. Well, isn't that all you do in locating them?

A. Well, there wasn't anything to locate them on *the*. The land wasn't surveyed.

Q. Wasn't it surveyed in October, 1903?

A. That is, it was surveyed, but it wasn't—the plats were not filed is what I mean. That is, in other words, it wasn't open for entry.

Q. The plats were filed, but the State hadn't made its selection?

A. No, the plats wasn't filed in 1903, in the fall.

Q. And when you went into the country to locate your clients, you located them or showed them over the best timber that you could find, did you not?

A. Why, as a rule, yes.

Q. And you had no reason to make any exception with the persons that you showed over the timber in 38-5 and 6, in the fall of 1903, did you?

A. I don't catch that.

The Reporter repeated the last question.

A. As to showing them good and bad land?

Q. Yes. You showed them the best land there, didn't you?

A. Why, I had to show them everything as we went through it. [3007—2677]

Q. Well, I know; but you showed them particular claims for themselves, didn't you?     A. Yes, sir.



(Testimony of William Dwyer.)

Q. And you showed each one the best that was available at the time you showed it to them?

A. Why, I can't answer that in that way, Mr. Gordon. For instance, that I have shown say section 25, I would say, "Now, here is a section here has got four claims on it." Now, there would be some light claims and some good claims on that particular section. There would be good and bad on that one section. See?

Q. But you showed each person that employed you about as good timber as you could find there, did you not?

A. Well, I showed them the general run of it, yes. It was pretty hard to segregate.

Q. In other words, you had no purpose in holding better timber that you were holding away from them?

A. Well, that was all second growth timber, Mr. Gordon, and you may take it as a whole and take five sections of it and you would have an average of the whole thing.

Q. But you don't follow me, or maybe I don't make myself clear. You had cruised the timber in the three townships and knew practically how much timber was in each section, in each township. You were familiar with the timber in each section in each township in those three townships, were you not?

A. Yes, sir.

Q. And the people that employed you to locate them in October, 1903, you showed them the best timber that you knew of in those sections, did you not?

(Testimony of William Dwyer.)

A. Yes, sir. That was, the best with the rest, of course.

Q. And they took the claims that you told them were the best, didn't they?

A. Well, they took the claims that were the best they had. They [3008—2678] were about all alike; there wasn't much difference.

Q. And you didn't know of any better timber in those townships at that time, did you? A. No, sir.

Q. Now, you said that David S. Bingham was an old man that lived up in the timber there and had been through a great deal of it?

A. Why, the placer mines up there known as the Bingham Placers, Mr. Gordon, was up in 38-5 there.

Q. Bingham was located on 39-5, wasn't he?

A. Well, they had some placer ground over on that creek, too, but that was known as the Bingham Placers. Him and his brothers had lived up there for several years.

Q. And you located him there, did you?

A. I gave him the minutes of that timber claim.

Q. And he paid you for it? A. Yes, sir.

Q. And that was about as good a timber claim as there was in that locality, was it not?

A. Why, it was about an average.

Q. You don't know of any that you were holding out for any purpose that was better than that, do you?

A. Why, no; there wasn't any. After they got through they were all about alike.

Q. And you also located Daniel Greenburg in

(Testimony of William Dwyer.)

39-5?      A. Yes.

Q. And his claim was as good as any other timber in that township, wasn't it?      A. Yes, sir.

Q. And was William McMillan's claim just as good as any other? Did it have as much timber on it as any others in that township at the time you located him?

A. Oh, I guess it would be about an average.  
[3009—2679]

Q. And you remember locating Edgar H. Dammarell and Fred E. Justice and Jackson O'Keefe?

A. Yes, sir.

Q. And Joseph H. Prentice?      A. Yes, sir.

Q. Charles W. Taylor and Edgar J. Taylor?

A. Yes, sir.

Q. Now, you showed those people over the land that they subsequently filed upon, in the fall of 1903, did you not?      A. Yes, sir.

Q. And the land that you showed them over was about as good as any if not better than the other land in the townships in which they were located?

A. No, it isn't. There isn't much difference in that group of land along there. Any ten forties that you might pick out on that township line there would make an average. It is second growth, and it all grows just alike.

Q. Well, you didn't know of any better timber in those townships when you located those entrymen who you were employed to show over the land, did you?      A. Oh, yes, yes.

Q. That wasn't taken up at that time?

(Testimony of William Dwyer.)

A. Oh, no. It was taken. No, it was taken later on. It was taken by the State, and it was taken by scrip, and by—some mining ground.

Q. How is it if there was any better there that you didn't put those people that employed you on the best timber that was in those townships?

A. Well, there was scrip filed on it.

Q. What scrip was filed on it?

A. Northern Pacific.

Q. Yes; but that had been filed before you was there. That was [3010—2680] filed before you carried these people over the land.

A. I know it, but then I had to show them—I didn't show them Northern Pacific scrip.

Q. No; but you said that there was some that the State took after that.

A. Oh, the State took it before that.

Q. When did the State take it?

A. Well, the State took it in—the selection was made in April.

Q. Well, they hadn't taken that in October, 1903.

A. I know they hadn't.

Q. Well, now, if the State took any better timber in April, 1904, than was upon the claims that was entered about the same time by the entrymen that you were employed to show the land to in October, 1903, why didn't you locate them on the land that you say that the State subsequently took that was better?

A. Oh, they located nearly all that township, back and forth, Mr. Gordon.

(Testimony of William Dwyer.)

Q. Who did?

A. Those entrymen that was up there. They stayed up there and camped there and had to look the ground all over in order to get an idea, because they didn't know anything about what the State was going to select, or what was going to become of the land.

Q. That is what I say, and they got the best—

A. Yes, sir—that was left after the State got through with it.

Q. No, but I am speaking about October. The State hadn't done anything in October.

A. Well, they didn't file on their first choice in April down there; they filed on the next best left. There was better timber there, yes, sir, but it was taken. I understand what you are getting at.

Q. Let's see, didn't you give them the descriptions of their land up there in October, 1903—the minutes of the land that you [3011—2681] showed them over?

A. They had the minutes of the townships there, and the land, yes.

Q. Well, I am not asking about the minutes of the township; I am asking about each particular claim that you showed them over; that you gave each man the minutes of the particular claim that you showed him over?      A. In the fall?

Q. Yes, sir.      A. No, sir.

Q. When did you give them to him?

A. After the State made its selection they got the



(Testimony of William Dwyer.)

minutes of the lands here in the hall of the land office.

Q. Who gave them to them?

A. I don't know; I think Mr. O'Keefe.

Q. Where did Mr. O'Keefe get his information?

A. Why, he got it from the land office, from the plat, or from me, or possibly both.

Q. Then you didn't locate them on anything, did you?     A. Yes, I did.

Q. Well, why were you entitled to any fee if the land you had carried them over in the fall before they located on some date in the spring of 1904?

A. They located on the very lands they had been over, but they wasn't their choice. They would have taken better lands if they could have gotten them, that they had seen and been over at the same time.

Q. Now, did you give each one of these gentlemen the description of his land?

A. No, sir. You see, Mr. Gordon, the plat had to be checked up after the State had got through and gone over it, and then those claims were selected out as the State left the township. That is, in other words, they took what the State left. [3012—2682]

Q. But you had nothing to do with giving them the descriptions upon which they did file, did you, to the people in that line-up of April, 1904?

A. Yes, sir. Oh, yes, I did. I took care of them. I got my—

Q. And are you the man that shuffled them from one claim to the other?

A. They never was shuffled; they never was on any

(Testimony of William Dwyer.)

particular claim. They got in line there, as I explained on my direct examination, with the expectation of getting some lands to file on, if they were not all taken, and they knew that they had to be in line if they got anything—if they got a filing.

Q. Now, when did you give them the descriptions of the land upon which they filed?

A. Why, they got it here when they made their papers out.

Q. Well, who gave it to them?

A. Why, I presume I did.

Q. Well, you said Mr. O'Keefe gave them some?

A. Well, I presume I gave them to Mr. O'Keefe. I didn't have much to do with these brother in laws of Mr. O'Keefe at the time.

Q. Well, there were only two of Mr. O'Keefe's nephews in the line, and there were 18 or 20 people that you located.

A. Well, I got them all their locations.

Q. Now, did you understand that there was to be some arrangement made with the State selectors whereby they would not bother anything upon which scrip had been offered for?

A. Why, I didn't know anything definite about it, but I came to a conclusion that there had been when they took the Kester and Kettenbach scrip and left the Skuse.

Q. They never left the Skuse scrip, did they?

A. Yes, sir.

Q. Wasn't that rejected?

A. So was Kettenbach's rejected; they were all

(Testimony of William Dwyer.)

rejected. [3013—2683]

Q. Well, did you get that information from Mr. Fitzgerald, that there was going to be some arrangement made with the State selectors whereby this scrip would not be bothered at all?

A. I got that from somebody, and I forget just now who it was.

Q. And wasn't that the reason that you thought that your entrymen would be allowed to file when you located them there in the fall before?

A. Why, I knew that they would be allowed to file if they made the first application after the State.

Q. But it was your understanding that there was to be a frame-up with the State selectors?

A. That is what I was given to understand all along the line, because they had gone in there and posted these notices and got some politicians here to recommend them as State land selectors, and the frame-up was on and came very near being pulled off.

Q. But that was relative to the scrip, wasn't it?

A. The whole thing, yes. The gay Lord Thompson over here was the head Mogul, the man that got the Skuse scrip left, in my estimation. I met him coming out of Jansen's home. Of course, this is guesswork with me; but a man can guess right quite often where circumstances bears him out later on.

Q. That is the theory upon which I am trying this case.

A. That is what I understand.

Q. Now, you got the money for Mrs. Justice to make her proof from Kester, did you not?

(Testimony of William Dwyer.)

A. Yes, sir, I think I did. I got it from the bank. I believe it was Kester I spoke to.

Q. Well, aren't you sure about that?

A. Yes, I presume I got it from Kester. He was the cashier. I presume it was him.

Q. Well, now, you haven't answered positively yet.

A. It is so long ago. I think I could directly answer it and [3014—2684] say yes, and I believe I did, but it is so long ago I hate to be certain.

Q. And did she give you a note? A. Yes, sir.

Q. And did she make a mortgage? A. Yes, sir.

Q. And that was all done the same day, was it not?

A. I believe it was.

Q. The day that she got the money was the day she made her proof? A. I believe so.

Q. And you got the money to pay the expenses of Guy L. Wilson from Mr. Kester also, didn't you?

A. Yes, sir.

Q. And he gave a note for \$550.00, did he not?

A. Something like that—whatever it amounted to.

Q. And did he give you a mortgage that day to secure that note? A. Yes, sir.

Q. The day he made the proof? A. Yes, sir.

Q. And later in the day he decided not to take the mortgage, but the land would be turned over instead; is that correct? A. Yes, sir.

Q. The transaction was, that you asked Mr. Wilson if his wife was there so they could make the mortgage, and he said he would rather not mortgage it; that he thought he would convey the prop-

(Testimony of William Dwyer.)

erty, it that correct?      A. Yes, sir.

Q. And then it was that you went to see Mr. Kester about Kester taking Wilson's claim?

A. Yes, sir.

Q. Now, what was the explanation you gave yesterday about the [3015—2685] reason that you told Charles Carey that the least he said about the transaction of taking up a claim the better?

A. Well, there was pretty sharp competition here then in locating lands, and, as I understood it, after a relinquishment had been made to the United States for a certain piece of land, that you could offer a filing on it and get—or, in other words, contest it.

Q. And you had the relinquishment at the time you first talked with Mr. Carey, didn't you?

A. Why, I think it was in escrow, or somewhere where I could get it.

Q. And did he file the day after, or the same day that you talked with him?

A. Well, I don't just remember, but I think so. I think it was the next day or so.

Q. Well, now, you had control of that relinquishment, did you not?

A. Well, I had control of it all but paying for it.

Q. Well, nobody could file any scrip or locate anything on it until that relinquishment was either out or until it was filed with the Government, could they?

A. Yes; but if anybody knew it was in existence they would start a contest.

Q. In what way could they start a contest?



(Testimony of William Dwyer.)

A. Why, go and start a contest; say that the land had been relinquished.

Q. Well, what would that start the contest over?

A. Well, that the land had already been relinquished; that the man had gone before a notary and sworn to a relinquishment, and somebody was having the relinquishment, speculating on it, etc.—make out a general complaint—add everything.

Q. What would it avail anyone to start any contest of that kind? They couldn't get the filing on that land, could they? [3016—2686]

A. They could if they could show that this land had been relinquished, as I understand it.

Q. Well, a relinquishment isn't anything until it is filed.

A. Well, if I relinquished a piece of land to you, and you had your relinquishment in your possession and didn't use it, and Mr. Tannahill would go up and file a contest against that particular entry, claiming that he had knowledge that there was a relinquishment made of that land, and it was being held for speculative purposes, why I believe he would start a contest, wouldn't he? He would sure start a contest.

Q. Suppose the man that held the relinquishment should destroy it; what would it avail anybody? That wouldn't defeat him of his right, would it?

A. Why, I don't know as to the technical points of law; but I know you could start a contest on it, anyway. You would have a contest on your hands, sure.

(Testimony of William Dwyer.)

Q. You could start a contest on anything, couldn't you? A. Well, I always had good grounds.

Q. Of course, we appreciate that, Mr. Dwyer, that you had good grounds and good reasons for all of it; but you can start a contest on anything, can't you?

A. Well, I believe you can very easy; and to avoid that is the reason I made that assertion to Mr. Carey.

Q. Now, do you remember that in the first conversation with Mr. Carey he asked how much he could get out of his claim? A. Yes.

Q. And that you told him your location fee perhaps would be \$150.00, maybe \$200.00?

A. Why, yes. Off-handed I had to tell that to everybody that was taking claims. They had to know about the first thing what they could get for them. That was about the first question they asked you.

Q. Do you remember having some talk with Mr. Edward M. Lewis about the contest of a claim that you had located him on? [3017—2687]

A. Yes, I remember something about it.

Q. And you remember that you gave him \$30.00, the expense of the contest?

A. Why, some fellow filed a protest, and I told him—

Q. A protest, or a contest?

A. It was a protest, and I told him that I would see that he got his filing all clear; that I would pay for the expense of it. It was just a protest. It was

(Testimony of William Dwyer.)

a kind of a hold up; it was a fellow wanted some money.

Q. That was one of those things, then, that you could start that wasn't—

A. Well, I knew what the outcome would be; I knew he had no grounds for the contest. I told him I would pay the expenses and I would see that he got his filing clear.

Q. You guaranteed Mr. Lewis a filing, did you?

A. I guaranteed all of them, Mr. Gordon.

Q. Now, you detailed a conversation that you had with Shaeffer relative to his claim. Now, do you remember when you testified at the trial of the case against yourself and Kester and Kettenbach, in Moscow, in the spring of 1907, that you couldn't remember any of that conversation?

A. I don't remember it now only as in regard to getting a claim for his sister, and what I testified to about his meeting his sister I have learned since that time, that his sister was on the same train.

Q. You have learned that since 1907?

A. Yes, sir.

Q. Now, you remember Rowland B. Lambdin, do you not?      A. Yes, sir,

Q. And you got the money for him to make his final proof, did you?

A. No, sir, I don't think I did. No, I know I didn't.

Q. You were one of his final proof witnesses, were you not? [3018—2688]      A. I presume I was.

Q. Do you know where he got his money to make

(Testimony of William Dwyer.)

his final proof?

A. Why, he had money when he was with me and when I located him, and I don't know what he did tell me, whether he used his own money or whether he got it from some of his relatives.

Q. Well, now, as a matter of fact, didn't you and Lambdin go to the Lewiston National Bank, and you and Lambdin sign a note, and George Kester gave you the amount for him to make his final proof, for the amount of \$400.00?

A. Well, at the time he made final proof there might have been something of that sort; but when we went into the woods to file I know he had money of his own, because he lost his pocket-book.

Q. Well, I am not inquiring about that.

A. Well, I misunderstood you, then.

Q. I am asking you if you didn't get the money for him to make his final proof?

A. If he didn't have it, I presume I helped him to get it, yes, sir.

Q. Well, now, can't you be more definite about it than that? A. Why —

Mr. TANNAHILL.—What page is that?

Mr. GORDON.—1802.

WITNESS.—Why, I presume I did. If that is in my testimony there at that time I presume I did, because I would remember it better then.

Q. Kester was the first person that spoke to you about Cornell taking up a claim, was he not?

A. Yes, sir.

Q. And you had seen Cornell about here for some

(Testimony of William Dwyer.)

time before that?

A. No, I hadn't never seen him, Mr. Gordon. I didn't know him.

Q. Hadn't he been working around here picking cherries and work like that? [3019—2689]

A. No—that was afterwards.

Q. Was he very poorly clad when you saw him?

A. Well, yes; he didn't look very thrifty.

Q. And you say he paid you \$200.00 for a relinquishment? A. Yes, sir.

Q. When did he pay you that?

A. Well, some time or another about the time the transaction was done. It was about the time he filed, or proved up, or something—some time.

Q. Now, was it the time he filed or the time he proved up?

A. Well, I couldn't tell you just when it was now, I don't recollect, but I know he paid me. I remember his taking me in the Lewiston National Bank, I think, and getting the money from Kester.

Q. He was in the bank, and he called you into there, did he? Do you remember about that?

A. No, I don't know as he was in the bank. I haven't a very distinct recollection of that, because I know that I didn't pay a great deal of attention to that transaction. It is so long ago I have forgotten what I did do.

Q. Now, the two Taylor boys, and Dammarell and Prentice and O'Keefe were located by you, I think you said. A. Yes, sir.

Q. And how much location fee did you get out



(Testimony of William Dwyer.)

of the five of them?     A. I think I got \$400.00.

Q. And when was that paid out?

A. That was paid me the day that they filed.

Q. And they didn't pay you the day that they made the proof?

A. No; I believe they paid me the day of the filing.

Q. Each one of them paid you the money themselves?     A. Yes, sir.

Q. Now, you remember a plat that has been introduced in evidence, marked Complainant's Exhibit 80, the plat that was made out for Mr. Dowd [3020—2690] by you, which I now show you? Do you remember that plat, Mr. Dwyer?

A. Yes, sir.

Q. Of those townships?     A. Yes, sir.

Q. And you made that plat out yourself?

A. I think I did, yes, sir.

Q. Now, don't you know that you did?

A. Well, I haven't seen it yet. Wait till I get to see it. (Mr. Gordon handed said plat to the witness, who examined the same.) Yes, sir, I made that plat.

Q. And you have a key that goes with that, do you not, on the end of it?     A. Yes, sir.

Q. And that is in your handwriting, too?

A. Yes, sir.

Q. And the "X" means K. and K., as is indicated on the plat, and the "O," individuals?

A. Yes, sir.

Q. Now, I see several markings here where there has been a circle run around an X mark. Now, why

(Testimony of William Dwyer.)

was that change made?

A. Oh, it was lands that possibly had been priced and had the price on them and knew what they could be bought for, or something like that. If you will show me the plat I can tell you—show me the townships there. (Mr. Gordon handed said plat to the witness.) Yes, those were lands that a great many of those lands doesn't belong to Kester and Kettenbach. Those "X" lands, they were lands that they knew and that they could control, that they could buy and place.

Q. Now, why didn't you put that key on the plats? You haven't anything explaining that on the plats.

A. Well, that doesn't be there generally, Mr. Gordon, along those lines, where you are giving information to outsiders.

Q. Well, now, look at those marked that way in section 29, township [3021—2691] 38-6. Now, whose lands are they that are marked that way?

A. Why, they were individual lands.

Q. Well, who are the individuals that own them?

A. Why, that was Dr. Atkinson, I think, at that time. I think he owned one of these quarter sections.

Q. And he was a brother in law of George Kester's, was he not?

A. Yes, he was later on. X's because George had a price on it.

Q. But when it was originally made—

A. —it was made as individual land, but later on it was found out that it was priced, or in some way

(Testimony of William Dwyer.)

made so as he could sell it.

Q. Now, those that are marked that way in Section 15, 38-5?

A. In 15? Well, the same way; but there was a price on that land, Mr. Gordon.

Q. Well, whose land was that?

A. That land now belongs to Kittie E. Dwyer.

Q. Now, those in Section 14, 38-5?

A. Well, that is land that was priced, but it is later on. There was a price on that land at that time.

Q. Whose land was it at that time? In whose name was it?

A. I forget, but it is here. I think it has been since sold to the Clearwater Timber Company.

Q. Do you remember the entryman that made the location?

A. Why, I think one was Kincaid, and I think the other was Goldsmith. Now, that plat is wrong, I can see it here—there is a mistake there. That is, I will say in regard to this plat, there isn't any of it very correct. The lands was given—all the lands that was given in there, except what was owned by the State and the Weierhausers, you see, because it is generally understood that it is all for sale that isn't owned by those people; and in giving a plat to prospective purchasers that comes in from the outside, you give them about all the land you think they can buy.

Q. Well, you made that plat you have just been speaking about? [3022—2692]

A. Yes, sir, and that is the reason why I explain it,

(Testimony of William Dwyer.)

because it isn't correct in all respects.

Q. How did you get this information from which you have made out this plat as to the land controlled by these people, as you have explained it—by Kester and Kettenbach?

A. Why, I believe that plat was mostly made from memory, Mr. Gordon. I just sat down and made it off-handed.

Q. But I mean you had to have some knowledge to show the land that was owned by Kester and Kettenbach, or controlled by Kester and Kettenbach, did you not?

A. Yes; I had all of those lands in mind. I could sit down and make a plat of any of those townships at that time.

Q. Now, you have a claim in there which you marked with a cross and a circle, which according to the key would indicate that it was Kester and Kettenbach's land. That was a claim that was entered by Mr. Frank Moore, who was an attorney for Mr. Kester, was he not?

A. Well, that was land that was marked, as I say, that was land that wasn't owned by either the Weierhausers nor the State, and that land wasn't proved up at that time; and that was generally understood between I and Mr. Dowd, that he wanted the lands that could be purchased, and it didn't make any particular difference what mark was on them.

Q. But the way it was marked, that would indicate that it was Kester and Kettenbach's land, would it not?

(Testimony of William Dwyer.)

A. Well, it was marked so that it would give him some information about it.

Q. Was that all that that indicated?

A. Well, as I told you before, that plat isn't correct. It was just—it might just as well have an "X" as an "O" on it, as far as being in on the market for sale that anybody could buy. If it was a Weierhauser piece it surely couldn't be bought; and I presume there is other lands down there that if that plat was checked up pretty closely [3023—2693] that it wasn't proved up at that time, maybe.

Q. Do you remember testifying relative to this matter when you were a witness on behalf of the defendants in the case of William F. Kettenbach, George H. Kester and William Dwyer, at Moscow, in the spring of 1907, and referred to in the stipulation as record No. 1605?

A. I don't remember—yes, I remember testifying up there.

Mr. TANNAHILL.—What page?

Mr. GORDON.—1813.

Q. And do you remember Mr. Frank Moore asking you about his claim that is marked off in the plat?

A. I believe so; yes, sir.

Q. And he was representing you and Mr. Kester and Mr. Kettenbach at that trial, was he not?

A. Yes, sir.

Q. And do you remember Mr. Moore asking you this question:

“Q. Further on, Mr. Dwyer, I will call your attention to the fact that some of these lands are marked



(Testimony of William Dwyer.)

with an 'X' apparently as Kester and Kettenbach lands, and also marked with a circle, which, according to that key, indicates that they belong to other parties?     A. Yes, sir.

“Q. Will you explain that?

“A. Well, I suppose that that was a mistake.”

Do you remember that question being asked you, and that answer being made by you?

A. Yes. I think now it was a mistake. I don't think the land was proved up.

Q. This question was asked you at the same time, page 1813:

“Q. Can you give an explanation now as to what those instances where the land is marked with both an X and an O indicate or mean?

“A. They were lands that were—had been—it was a mistake made in checking the plat.”

Do you remember giving that answer? [3024—2694]

A. I suppose I did. As I say now, I think that the plat isn't right—never was. It was just a kind of a plat made from memory.

Q. And the X's were put on there first, and then the circle put around afterward; is that correct?

A. Well, unless the circles were put on first.

Q. Now, do you remember at that same trial (page 1814) this question being asked you by Mr. Moore:

“Q. Do you remember now, Mr. Dwyer, which marking was placed upon the plat first, the X or the O?

“A. Why, I can't tell, but it seems to me here on

(Testimony of William Dwyer.)

this 38-6 it was the X.

“Q. Will you turn to the plat of section 7, 39-5, Mr. Dwyer, on that plat—have you got it?

“A. Yes, sir.

“Q. How is it marked?

“A. That is marked with an X.”

Do you remember those questions and answers being asked and made by you?

A. Yes, sir, I think I do.

Q. And the X was placed on first, and later the O was put around that?

A. No, not in all cases. I think the O was put on there first, Mr. Gordon. By looking at it closely I think the O was put on there first.

Q. Then you wish to change your testimony that you gave before at the trial, in that respect?

A. No. I didn't testify there that they were all made—I said in 38-6, now,—now, I ain't going to testify that they were all made—they may have been made in 38-6 first. You look at the plat—

Q. I am speaking with reference to the township that I read to you about. (Handing plat to witness.)

A. 38-5. [3025—2695]

Q. This is 38-6 that question had reference to?

A. Well, I don't know. I believe those zeros was made first on this plat, too.

Q. Well, that is the same plats you were testifying to before?      A. Yes, the same one.

Q. Now, I wish you would turn to section 7, 39-5.

A. Yes, sir.

Q. Which is marked with an X.

(Testimony of William Dwyer.)

A. I see here in 38 and 5 that there is two mistakes here—State lands—see, there by error, in 7,—160 acres of State land in here. (Indicating upon plat.)

Q. And what sections are those? I wish you would read that.

A. Well, that is the south half of the northwest of 25, and the north half of the northwest of 24.

Q. Well, will you turn to Section 7, 39-5? That is marked with an X, is it not, which indicates that it belongs to Kester and Kettenbach?

A. Just a moment, Mr. Gordon. (Examining plat.) Yes, sir.

Q. And who located on that?

A. I believe that is Mr. Moore's—the southeast of 7.

Q. That is a mistake, then, is it?

A. Yes, sir, that is a mistake as to the marking.

At this time a recess was taken until two o'clock P. M. [3026—2696]

At two o'clock P. M. the hearing was resumed.

WILLIAM DWYER, a witness heretofore called by the defendants, and duly sworn, resumed the witness-stand for further cross-examination, and testified as follows, to wit:

Cross-examination (Continued).

(By Mr. GORDON.)

Q. Now, Mr. Dwyer, you spoke about a circular that was issued in October, 1904, I think.

A. Yes, sir.

Q. Well, now, is that the big circular that was printed and circulated that was signed "CITIZENS

(Testimony of William Dwyer.)

COMMITTEE''?      A. Yes, sir.

Q. And a copy of which you attached to your petition for a change of venue down to Boise?

A. Yes, sir.

Q. Was that really circulated?

A. Huh-h-h—I should say it was, Mr. Gordon,—very thoroughly.

Q. Was it much commented on?

A. Well, I think it was.

Q. How many timber and stone claims are now in the name of Mrs. Kittie E. Dwyer—12 or 14,—or 16?

A. I wouldn't be positive, but it is in the neighborhood of a dozen—12 or 13, I think.

Q. Now, did I ask you whether or not you got the money for Fred. E. Justice to make his proof?  
[3027—2697]

A. I don't remember whether you asked me that question or not.

Q. Well, did you?

A. I am under the impression that—I am under the impression that his mother spoke about getting him this money.

Q. Well, do you know where you got it?

A. Why, if I got it for him I presume I got it from Mr. Kester.

Q. Did you take a mortgage?

A. Well, there was a note sure; whether there was a mortgage or not I can't just now remember.

Q. Was Fred. Justice employed by you?

A. No, sir.

Q. You made the remark yesterday that you had

(Testimony of William Dwyer.)

gotten your recollection refreshed as to a certain claim since you returned from Boise. What claim was that?

A. Why, that was the Mrs. Justice claim, wasn't it, that I referred to there?

Q. You were talking—it was in connection with—I just made a note here “recollection refreshed since you returned from Boise.”

A. Yes. That was at the time that the Shevlin-Clarke people were coming in here to buy.

Q. That was the particular claim? A. Yes.

Q. Did you testify any different relative to that in Boise?

A. Why, I don't think I testified as to the reason I got Mrs. Dwyer to try to buy it.

Q. Did I understand you to say that Cornell was employed here during his stay as a cherry-picker?

A. Why, I don't know whether I gave that in in evidence or not, but I think he picked cherries over in my orchard for the White Brothers.

Q. You remember the testimony here given by Mr. Sherburne, do you? A. Yes, sir. [3028—2698]

Q. And the statement that Mr. Sherburne made relative to his conversation with you was true, was it not? A. I had some such conversation, I believe.

Q. And, as I understand, you said it was a joke?

A. Well, yes, it was. Do you want me to explain that?

Mr. TANNAHILL.—Yes, go ahead and explain it.

WITNESS.—Why, the reason it was a joke was, Mr. Sherburne and I lived neighbors over there, and



(Testimony of William Dwyer.)

he had his timber and stone up in 35-5, and I had tried to buy it of him; I think his price was \$800.00, and, however, whatever it was I made him an offer and he didn't sell it to me but he sold it to the Weierhauser people for the same price and paid a commission out of it, and I saw it in the transfer sheet, and I met him the next day, or I think it was the next day, and I got to talking to him about it, and asked him why he didn't go and get another timber claim, or something—we were talking about timber land—and he said he had one, and I told him that was all right; he might change—he had better change his name and go and get another one so he could sell it to the Weierhausers, to be sure his neighbors wouldn't make anything off of it, something like that; I don't know the exact language, but that is what I purported to say to him. I knew he had a claim, knew he was an old resident here and his name was well known, and the changing his name was just a joke.

Mr. GORDON.—Q. Now, you were in some land transaction by which you had an agreement that if they acquired it in a certain manner that you were to get an interest in it with Kester and Kettenbach, were you not?

A. Why, that was several years ago; it was some State land up here that was being sold, and the appraised value of it I think was \$11,000.00, and if it sold for the appraised value why I was to acquire an interest in it. But it didn't; I think it run up to \$31,000.00 or \$32,000.00, and the deal never was closed, and Mr. Kester paid me for my time and my

(Testimony of William Dwyer.)

work while I was looking after it. [3029—2699]

Q. You had already cruised it, had you?

A. Yes, sir.

Q. At the instance of Kester and Kettenbach?

A. Well, it was at the instance of myself, and it was generally talked around here. It was advertised in the papers, you know, for sale.

Q. Well, I mean if you didn't cruise it for them, why did they pay you for it?

A. Well, yes, I cruised it for them; that is, they were willing to pay me, at any rate, for my information that I gave them.

Q. Now, Mr. Dwyer, do you remember the names of the people whose claims are involved in this suit that you located and was a witness for?

A. I don't believe I can call them from memory.

Q. Well, if I read them off you can tell whether you located them?

A. Whether I located them or not?

Q. Yes. A. Yes, sir, I can.

Q. Jackson O'Keefe? A. Yes, sir.

Q. Charles W. Taylor? A. Yes, sir.

Q. Joseph H. Prentice? A. Yes, sir.

Q. Edgar J. Taylor? A. Yes, sir.

Q. Edgar H. Dammarell? A. Yes, sir.

Q. George H. Kester? A. Yes, sir.

Q. Eugene H. Hopper? A. Yes, sir. [3030—2700]

Q. Edith J. Hopper? A. Yes, sir.

Q. Guy L. Wilson? A. Yes, sir.

Q. Edna P. Kester? A. Yes, sir.

(Testimony of William Dwyer.)

Q. Frances E. Justice?      A. Yes, sir.

Q. Fred E. Justice?      A. Yes, sir.

Q. Elizabeth Kettenbach?      A. Yes, sir.

Q. Elizabeth White?      A. Yes, sir.

Q. William J. White?      A. Yes, sir.

Q. Mamie P. White?      A. Yes, sir.

Q. Martha E. Hallett?      A. Yes, sir.

Q. Daniel W. Greenburg?      A. Yes, sir.

Q. David S. Bingham?      A. Yes, sir.

Q. Ivan R. Cornell?      A. Yes, sir.

Q. William E. Helkenberg?

A. Yes, sir. Now, Mr. Gordon, in regard to that William E. Helkenberg claim, I really didn't locate him. I just sold him that relinquishment. He was as well acquainted with that country as I was, because he had worked in there.

Q. Rowland A. Lambdin?      [3031—2701]

A. Yes, sir, I located him.

Q. William McMillan?      A. Yes, sir.

Q. Hattie Rowland?      A. Yes, sir.

Q. Fred W. Shaeffer?      A. Yes, sir.

Q. Now, were you also a witness at final proof for these entrymen?

A. Well, I couldn't say; I presume I was for some of them.

Q. Now, you said that the duties of a locator was to attend to the locating and filing papers and seeing them through everything in detail; is that correct?

A. Well, your duties was to get the minutes of the land correct, that is the duty mostly of a locator, and then after you gave your entryman the correct min-

(Testimony of William Dwyer.)

utes of his land, why then anybody could make out his papers.

Q. Now, what do you call the minutes of the land?

A. Well, minutes, I mean the descriptions.

Q. Is that all?      A. Yes.

Q. Well, now, the witness had to give an estimate of the timber on the land at the land office. Did you furnish the entrymen with that?

A. Well, yes, as a rule I did. Sometimes they furnished them themselves. Of course, I suggested the making of their papers, or I suggested somebody that I knew would make them correct, was all.

Q. Now, you remember giving the entrymen in the line-up, the 18 or 20 of them that filed on April 24th, 1904, their estimates, do you not?

A. I believe I gave them an estimate, an approximate estimate.

Q. You mean each of the entrymen? [3032—2702]

A. Yes—about the timber that was on their claims.

Q. And you gave them that several days before they filed?

A. Well, I presume that I told them all about the quality or quantity of timber that they had on their lands.

Q. I say, you gave them that information a few days before they filed?

A. Well, naturally I gave it to them several times, because that was talked over more than anything else, was the probable amount of timber and the value.

(Testimony of William Dwyer.)

Q. Now, Mr. Dwyer, at that time what was timber worth on the stump?

A. Well, there wasn't any fixed valuation. The Weierhauser people were not buying any, and wasn't laying any scrip on that class of timber. Mr. Holmberg told me in a conversation that he didn't know, he presumed that timber would have some value some day, but he didn't know.

Q. Was the timber worth a dollar a thousand at that time?

A. Oh, no, Mr. Gordon; you couldn't get a dollar a thousand for any of that timber at that time.

Q. Mr. Dwyer, I show you the testimony of William Dwyer taken at the final proof on the timber and stone entry of Charles Carey, and also the cross-examination, and ask you if you signed those two papers—the cross-examination of William Dwyer and the testimony of William Dwyer taken at the final proof?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

WITNESS.—Yes, I believe I did, if I can see the signature from here.

Mr. GORDON.—Q. Now, do you remember this question being asked you, Question No. 6, on cross-examination: "How long have you known the applicant?" "Answer. About six months." Was that correct? [3033—2703] A. Yes.

"Question. What is his financial condition, so far as you know?" "Answer. Good." Did you make that answer? A. I believe I did.



(Testimony of William Dwyer.)

Q. "Question 8. Do you know of your own knowledge that the applicant has sufficient money of his own to pay for this land and hold it for six months without mortgaging it?" "Answer. Yes." Do you remember that question being asked and that answer being made by you? A. I presume I did.

Mr. TANNAHILL.—Our objection goes to all this testimony.

Mr. GORDON.—We offer those two papers identified by the witness in evidence.

Mr. TANNAHILL.—Objected to as immaterial.

Mr. GORDON.—And ask that they retain the same exhibit number as was given when they were offered before. Is that right?

Mr. TANNAHILL.—All right. I suppose they can.

Mr. GORDON.—Well, I mean there is no use in giving them any other number?

Mr. TANNAHILL.—Oh, no.

The SPECIAL EXAMINER.—They have been offered once, I presume?

Mr. GORDON.—Yes.

The SPECIAL EXAMINER.—Well, just so that they are identified I guess is all that is necessary.

Mr. GORDON.—Q. Mr. Dwyer, how long had you known Guy L. Wilson before he made his application to enter?

A. Oh, I don't know just now about that—probably three or four years—maybe longer.

Q. I show you the testimony of William Dwyer, taken at the final proof upon the timber and stone

(Testimony of William Dwyer.)

filing of Guy L. Wilson, and the cross-examination, and ask you if you signed those papers.

A. Yes, sir, that is my signature. [3034—2704]

Q. Do you remember being asked at the land office what the financial condition of Guy L. Wilson is, so far as you know, Question No. 7, which you answered “Good”?

Mr. TANNAHILL.—Objected to as irrelevant and immaterial.

Mr. GORDON.—Q. Do you remember that question being asked you, and that answer being made by you?

A. Well, I think that was correct; his financial standing was pretty good for a young man like him; he had a home over here, and an orchard tract.

Q. “Question No. 8. Do you know of your own knowledge that the applicant has sufficient money of his own to pay for this land and hold it for six months without mortgaging it?”

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. And that you answered “No”?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. Do you remember that?

A. That he had sufficient money of his own, and I answered “No,” did you say?

Q. No. “Do you know of your own knowledge that the applicant has sufficient money of his own to pay for the land and to hold it for six months without mortgaging it?”

Mr. TANNAHILL.—Now, what was his answer?

(Testimony of William Dwyer.)

Mr. GORDON.—“No.”

Q. Now, do you remember that answer being made by you?

A. Why, I don't remember making that answer. I surely would have answered that “Yes,” because he borrowed the money, and I suppose that was his money when he borrowed it, the same as anybody else.

Mr. GORDON.—We offer those two papers that he has identified in evidence, and ask that they be given the same exhibit number as they [3035—2705] were given when they were offered before.

Mr. TANNAHILL.—Objected to as immaterial.

Mr. GORDON.—Q. Do you remember telling Fred. Shaeffer how much timber was upon his timber claim?

A. I don't remember the incident, but I presume I did.

Q. How much did you tell him was on it—two million feet? A. I don't just remember now.

Q. Do you remember the claim?

A. Why, yes, I remember it in a general way, but I don't remember the estimate, Mr. Gordon.

Q. Do you know what the financial condition of Rowland A. Lambdin was at the time that you was his witness at final proof?

A. Why, only what he told me.

Q. Well, did you think it was good or not good?

A. Why, I thought it was good.

Q. And did you know whether he could pay for the land with his own money and not have to mortgage his claim for six months?

(Testimony of William Dwyer.)

A. Well, I don't know as to that; I think he could, though, according to his story. I don't remember just exactly what his condition was as to ready cash at that time.

Q. Do you know where Daniel W. Greenburg got his money with which to make his proof?

A. Well, no, I don't.

Q. Do you remember how much timber you told Cornell was on his claim?

A. I presume I did; I don't know how much I told him, though.

Q. How much timber was on that claim?

A. I don't just remember the estimate of that claim, it is so long ago.

Q. Do you remember being a witness of Cornell at final proof?

A. Yes, I think I was. [3036—2706]

Q. I show you the cross-examination of William Dwyer taken at final proof, and ask you if you signed that paper? A. Yes, sir; that is my signature.

Q. How long had you known the applicant at the time he had made his proof?

A. Oh, I had seen him around here for a few months; I don't just remember now.

Q. Had you ever seen him before the day he came down to go to the train with you, when he went up to be located?

A. Well, I might have seen him, but not to know who he was. I presume if he was here around town here I would have seen him.

Q. Do you remember this question being asked you,

(Testimony of William Dwyer.)

Question 8, on that occasion, on cross-examination:

“Do you know of your own knowledge that the applicant has sufficient money of his own to pay for this land to hold it for six months without mortgaging it?” “Answer. I think he has.” Do you remember making that answer?

A. Well, that would be the answer I would make. I thought he had.

Mr. GORDON.—We offer that paper in evidence, and ask that it be marked the same exhibit number as given when it was offered before.

Mr. TANNAHILL.—Objected to as immaterial.

Mr. GORDON.—Q. Do you remember telling Mrs. Justice how many feet of timber her quarter section would cruise?

A. I don't remember the conversation, but I presume that I did.

Q. Do you remember how many feet you told her it would cruise? A. I don't just remember now.

Q. How many feet of timber are on that quarter section? A. I don't know that, Mr. Gordon.

Q. I show you the testimony of William Dwyer upon cross-examination at the final proof of Frances E. Justice, and ask you if you signed that paper? [3037—2707]

Mr. TANNAHILL.—Objected to as immaterial.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And do you remember Question 7 being asked you on that occasion: “What is her financial condition, as far as you know?” “Answer. All right.”



(Testimony of William Dwyer.)

Mr. TANNAHILL.—Objected to as immaterial.

Q. Do you remember that question being asked, and that answer being made by you?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. “Question. Do you know of your own knowledge that the applicant has sufficient money of her own to pay for this land and hold it for six months without mortgaging it?” “Answer. I think she has.”

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. Do you remember that?

A. Yes.

Mr. GORDON.—I offer that paper in evidence.

Mr. TANNAHILL.—Objected to as immaterial.

Mr. GORDON.—Q. Do you remember telling Fred. Justice how much timber was on his claim?

A. I presume so.

Q. Sir?      A. I presume so.

Q. Do you remember how much timber is on that claim?

A. Well, I think that that claim has got about fourteen hundred thousand on it—of all kinds of timber. Of course, it would not be classed as all merchantable.

Q. I show you the testimony of William Dwyer, given on cross-examination at final proof as a witness for the entryman Fred. E. Justice, [3038—2708] and ask you if you signed that paper?

A. Yes, sir; that is my signature.

Q. Do you remember this question being asked you: “Do you know of your own knowledge that the

(Testimony of William Dwyer.)

applicant has sufficient money of his own to pay for this land and hold it for six months without mortgaging it?" "Answer. I do not, but I think so."

Mr. TANNAHILL.—The same objection.

WITNESS.—Why, that answer was all right. He was a single man, and he had a tract of land across the river here, and a good position, and drawing a good salary. I think that was correct.

Mr. GORDON.—Q. Now, do you remember being a witness for Joseph H. Prentice, and Edgar H. Dammarell, and David S. Bingham?

A. I don't remember the occasion, but I presume I was. If I was named as a witness there and the record shows that I acted as a witness, I presume I was.

Q. And Clinton E. Perkins, Edgar J. Taylor and Charles W. Taylor? Do you remember what you said about their ability to pay for this land and hold it for six months without mortgaging it?

A. Why, I don't know just what was said, and I don't remember that I was a witness for Mr. Perkins. If I was, it has slipped my mind.

Q. Well, did you think their financial condition was such that they could hold the property for six months without mortgaging it?

A. Why, from the acquaintance that I had with them, and what was generally known, I presumed that they were, from what I was generally given to understand.

Q. Did you know the financial condition of Clinton E. Perkins?

(Testimony of William Dwyer.)

A. Why, only as I had heard it, and he was a farmer and rancher and had stock, and was fairly well fixed, as ranchers go in that locality.

Q. Now, would you say that he had money of his own at that time [3039—2709] so that he could hold his claim without mortgaging it for six months?

A. I presume he could.

Q. And how about the others that I read to you; did you think that their financial condition was such that they could hold their timber claims for six months without mortgaging them?

A. As far as I know.

Q. You were there as a witness; you were supposed to know, weren't you?

A. Well, that is what I testified to, as far as I know.

Q. What was the financial condition of David S. Bingham at that time—at the time he made his proof?

A. Well, sir, he gave me to understand that he was very well fixed.

Q. You knew that he was a stage-driver at that time, didn't you?

A. Oh, no. He had quit that and was married and was a farmer. He wasn't driving stage at that time, Mr. Gordon.

Q. You let him have the money with which to make his proof, did you not?

A. I don't just remember whether I did or not, whether I went good for him—I mean whether I helped him to get it.

(Testimony of William Dwyer.)

Q. Did he give a mortgage at all at that time?

A. I don't know but what he did.

Q. Can't you be positive about it?

A. I don't know. I went good for some people to prove up, and I don't remember now just who they all were. I remember Carey distinctly, and I think that I signed the note of Rowland A. Lambdin, and whether I helped Bingham or not I don't know. I would have if he had asked me at that time. Of course, he was responsible.

Q. Did you help McMillan get the money for his claim?

A. No, I don't think I did. No, I am certain I didn't. I didn't know the man at all.

Q. You were a witness for Jannie Myers, were you not? [3040—2710] A. I presume so.

Q. And do you know whether or not her financial condition at that time was good?

A. Why, the Myerses was supposed to be in good financial condition.

Q. And do you know whether she had sufficient funds so that she could hold her timber claim for six months without mortgaging it?

A. Well, the surroundings of the Myers' ranch and mill property up there would indicate that she could. It was only 80 acres.

Q. You would not have had any hesitancy in swearing that she could at that time, would you?

A. No, sir, I wouldn't.

Q. You knew all about them at that time, did you not? A. Sir?

(Testimony of William Dwyer.)

Q. You knew as much about them as you do now, did you not?

A. Well, I didn't know very much about them, only I made inquiry about C. S. Myers—his financial condition at that time. I knew they were rated all right.

Q. Now, you say that you remember about the Carey claim. Carey gave you a note the day that he made the proof, for the amount that you gave him, did he not?      A. Why, I think he did.

Q. And that note was taken up the next day, wasn't it?      A. Yes, sir.

Q. What did you do with the note—destroy it?

A. Why, I don't remember. I suppose I tore his name off, or something. I usually do tear the name off.

Q. Why didn't you give it to Mr. Carey?

A. Why, he could have had it if he wanted it. There wasn't anything said. It was just taken up, and nothing more thought of it.

Q. Well, have you any definite recollection as to whether or not you destroyed the note? [3041—2711]

A. Why, I presume it was destroyed, Mr. Gordon; I would naturally think so. I haven't any recollection of just the way it was done; but I presume it was torn up—the name torn off, or crumpled up and thrown in the waste basket, or something like that.

Q. And did he give you a mortgage?

A. No, Carey didn't give me a mortgage.

Q. What did he give you?

A. He gave me an option—an exclusive right to



(Testimony of William Dwyer.)

sell the land; and he was going away, but he retained the right also to sell the land. I told him to try and sell it if he could.

Q. And what did he give you that option for—as security for the money you had given him?

A. As security for the money; yes, sir.

Q. Well, what would that be security for, if he had the right to sell it the same as you had?

A. Well, it would be that I had—that option didn't run out for six months.

Q. Well, then, your only chance to have security was that he couldn't sell it, was that it?

A. Well, he couldn't have sold it during the life of that option.

Q. Well, I understood you to say he retained the right to sell it at the same time?

A. He retained the right to get a customer for it—to sell it, if he could; then he was to notify me that he had a customer for the land, and then we was to transfer it. He was anxious to sell it, and I didn't have a buyer for it.

Q. Then that is what you meant by your statement when you said he retained the right to sell it, too?

A. No, he didn't retain the right to sell it, too; he couldn't deliver no deed to it, but he had a right to hunt up a buyer. That was mutually understood between us, that was all.

Q. What became of the option? [3042—2712]

A. Well, when he deeded it, I don't know, I suppose the same as the note, it was destroyed or torn up. I don't know whether he got it back or not.

(Testimony of William Dwyer.)

Q. You remember instituting a contest against the homestead of one Susan C. Comstock, do you, Mr. Dwyer?     A. I believe so.

Q. Well, can't you remember more positive than that?

A. Well, I believe that was in the list of those contests.

Q. And you had a dismissal of that contest entered at the land office, did you?     A. Yes, sir.

Q. And on the same day on which it was dismissed you furnished Edward M. Lewis with a relinquishment, did you not, whereby he filed upon a portion of the land set out in the relinquishment that was relinquished, and William E. Helkenberg filed on the remainder of the land that was relinquished?

A. I believe there was some arrangement like that. The Susan Comstock entry was a square quarter section, and I believe there was six forties in the group, and they were divided, and it left three in each. I think there was 120 acres in each one of those claims.

Q. Well, can't you be a little more positive about that transaction, Mr. Dwyer?

A. Well, I am positive that that is the way it was, but what I am not positive about is how the land was divided up, whether the Susan C. Comstock claim was cut right in two, or whether there was one forty taken out of it, is what I can't just remember now. But I know there was six forties in there that were divided in the two claims, which takes in the Comstock land, as you say.

Q. Do you remember whether or not Mr. O'Keefe

(Testimony of William Dwyer.)

gave you a deed to take out and get Cornell to sign?

A. I believe he did.

Q. And do you remember that Mr. Kester asked you to locate [3043—2713] Shaeffer?

A. No, Kester didn't ask me to locate Shaeffer, but Kester said one time—we was having a kind of a joke about Shaeffer; he had been talking so much about being located; he said, "Fred thinks you ain't going to locate him." "Oh," I said, "I will locate him some day."

Q. How much did you tell Shaeffer his claim was worth?

A. Oh, I don't know just now. I suppose I told him what I thought it was worth. There wasn't any particular value on lands up there at that time, Mr. Gordon.

Q. You don't remember now?

A. No, I don't. I will say this much, though, that the lands up there, all the basis of their valuation was scrip, and they had laid scrip right up to those lands and had refused to—or rejected them, in other words; they didn't want to lay scrip on them. So that would go to show that they were inferior yet to the price of scrip.

Q. Now, when you came down from the timber in April, 1904, you found that there was a line-up here at the land office, did you not? A. Yes, sir.

Q. And you told the entrymen that they would have to get in line, those that you had had up there and located, did you not?

A. Well, I told them, or either sent them word.

(Testimony of William Dwyer.)

Q. Those that were not in line you sent word to; is that right?     A. Yes, sir.

Q. And told them that they had better get in line?  
A. Yes.

Q. Did you also send them word or tell them that if they were not going to get in line to let you know, and you would put somebody else on those locations?

A. Why, yes—I would get people in line, yes.

Q. Well, answer my question a little more fully.

A. Well, yes, I did.

Q. Now, whom did you talk to about selling the Guy Wilson claim— [3044—2714] Kester or Kettenbach, or both?

A. Well, if I remember right it was Mr. Kester. I gave him an estimate of the claim.

Q. And did you talk with either Kester or Kettenbach about taking over the property of Charles Carey?

A. Well, I talked to them right immediately about that time; I couldn't tell you just when it was.

Q. Which of them did you talk to—one, or both?

A. Well, maybe both of them.

Q. Now, do you remember talking to Jackson O'Keefe before you located the Taylor boys, and he told you that he would be good for them, or stand good for them?

A. Why, yes, I had a talk with him along those lines about my location fees. He said I need not be afraid of my location fees; that he would see that I was paid; that some of them was his relatives, and all of them was boys that he knew, and he said, "I will go good for their location fees."

(Testimony of William Dwyer.)

Q. Is that just exactly the way he said it?

A. Well, I couldn't say, but that is what he meant; that was the meaning of what he said.

Q. I read from page 732 of the testimony given by you at the trial of Kester, Kettenbach and Dwyer, at Boise, in February last, and from the context it appears that you were reciting a conversation which you had with Jackson O'Keefe, with reference to the five entrymen that have been referred to here as the O'Keefe entrymen, or the O'Keefe claims: " 'Well,' I said, 'if they will be around when the lands are opened and I will be sure of them,' I said, 'I would try and hunt them up and hold them out something, if there was anything vacant,' and he said, 'All right, I will go good for the boys,' he says, 'they will pay your location fee.' " Is that right, did you make such a statement?

A. That is what I meant when I answered this last question. People would make application—in other words, would want claims; and [3045—2715] then when the time would come they wouldn't be there; and I wanted somebody—I wanted to know who was reliable and who wasn't that would pay me for my locations, and also be sure to make filings.

Q. Now, how many people did you have in the line-up of April 24th or 25th, whichever it was, 1904?

A. Oh, I don't know—18 or 20, possibly—maybe more.

Q. You never had an account in your own name in the Lewiston National Bank, did you, Mr. Dwyer?

A. No, sir.

Q. Now, do you remember this testimony that was



(Testimony of William Dwyer.)

given by you at the trial at Boise in February last, to which I have adverted, page 748, relative to the circle K. checks?

A. That question again, please?

Q. Relative to the circle K. checks. I asked you what the aggregate amount of them were, or words to that effect, and you said: "I don't know, Mr. Gordon. It is so many years— You mean since 1901 or 1902?"

"Q. Yes, sir.

"A. Well, that is a pretty difficult question to answer offhand.

"Q. Well, was it \$100,000.00?

"A. Oh, no. No; I couldn't give you an estimate. It wasn't that much.

"Q. Well, was it \$90,000.00, Mr. Dwyer?

"A. No.

"Q. Well, how near \$90,000.00 was it?

"A. Well, I couldn't say. It wasn't that much, and I wouldn't say—

"Q. Can't you remember it?

"A. No, I can't remember the exact amount, or anywhere near it."

Do you remember those questions being asked you, and those answers made by you?

A. Yes, sir. [3046—2716]

Redirect Examination.

(By Mr. TANNAHILL.)

Q. Mr. Dwyer, I don't know whether I asked you concerning this one hundred dollar bill that was testified to by Mr. Robnett, from which he said loca-

(Testimony of William Dwyer.)

tion fees were paid. In one instance he testified that the bill was handed out to you by W. F. Kettenbach, and you took it and passed it around and brought it back in the evening, and made the remark that that bill had paid lots of location fees, or words to that effect.

Mr. GORDON.—You asked him about that.

Mr. TANNAHILL.—I don't remember whether I did or not.

WITNESS.—No; there never was anything of that sort.

Q. Now, Mr. Gordon asked you if you understood that there was some kind of a frame-up, or some understanding between Fitzgerald and some other parties concerning the State lands, and you testified that you understood there was, because they left the Skuse scrip or Fitzgerald scrip and took Kettenbach and Kester's scrip. I will ask you if you had any understanding or any information that there was any understanding between Kester and Kettenbach and any of the State land officials?

A. I had no understanding, no, sir, of any such a thing.

Q. You heard me read this letter to John T. Morrison, Governor of the State of Idaho at one time, that was referred to in the evidence of Mr. Goldsmith, did you not? A. Yes, sir.

Q. I will call your attention to that part of the letter stating that it was given out and generally understood here that the State would make no selections in this township, and this information is said

(Testimony of William Dwyer.)

to have come from Mr. Goldsmith, the State land selector. However this may be, some of our friends here, relying upon the statement, have gone in and made selections, or words to that effect. What do you know about that? [3047—2717]

A. Why, when the line-up of 37-6 was filed here, there was about half of the line that didn't move at all—just stepped back and let the others pass by them; and I wasn't interested in 37-6 at all, only just looking for the State, and I made inquiries about what that was about, and I think I asked somebody up there, and I believe it was Mr. Cook. I said, "What kind of a slip-in-the-cut is this here? I see that there is only half of that line-up going in." "Well," he says, "You can't prove it by me." I said, "Who is that young man over there at the front?" He had a peculiar mark on his hair here—a little white spot. "Why," he says, "that is Jansen's stepson, young Frongfelter." And there was another old gentleman alongside of him, and I forget his name now, but he used to work up here at the Sister's Hospital, I think, somewheres, and I says, "Uncle, who are you holding down this place for?" "Oh," he says, "for myself." "Well," I says, "why don't you go in?" "Well," he says, "the man that I was holding it down for has gone in." And I says, "That was Fitzgerald that went in there and filed that scrip?" "Yes," he says, "that was for Fitz." "Well," I says, "have you got through with your job?" "No," he says, "I am still going to stay here." And from gathering

(Testimony of William Dwyer.)

that information I found out that they had a line-up arranged for 39-4. And that was how that information happened to be given out, and how they happened to get double-crossed there, and that is what kept them from filing homesteads, and they were given to understand that the State wasn't going in there, and I think Mr. Goldsmith talked it over, and he said, "I will be around Lewiston every day and they will never twig anything, and they will be fooled on their homesteads, and," he says, "if we don't they will do just the same as they did in these other townships." And that is how that came about. Mr. Jansen had the line-up there, and had his stepson in the front of the line.

Mr. GORDON.—Q. Which line-up is this?

A. That is the line that was lined up for 39-4. That was in [3048—2718] June, the 20th I think they filed, I think, that the land was opened.

Q. Now, didn't he keep out the line-up that you had for that proposition? A. Who?

Q. That line-up that was there?

A. There wasn't any of that line-up that got any of that land at all.

Q. Well, didn't you have some people that you wanted to line up?

A. No, sir. If I told them so I was misleading him.

Q. Well, didn't you tell Jansen that?

A. No, sir, I don't remember telling Jansen that. Possibly I told somebody that would tell him, but that was like all the rest of the line-ups there, they

(Testimony of William Dwyer.)

belonged to Jansen and Fitzgerald, all of them, excepting about 18 people that I had in Miles Johnson's famous line-up of April 24th.

Q. Why do you call it "Miles Johnson's line-up"?

A. Well, he has been harping about it for the last six or eight years. The big line-up was the 147 people that was filed here February 24th, 1904. That was a line-up that Jansen had charge of, and Mr. Fitzgerald, and Mr. Maloney.

Q. Was that good timber that those people got?

A. Well, they didn't get any of it.

Q. In February didn't they get any of it?

A. Well, they didn't—they had a fling on most all of it that they filed on, but there wasn't a great many that proved up.

Q. Was it the people in that line-up that you contested? A. Yes, sir.

Q. That's where you got your twenty-odd contests, out of that line-up? A. Yes, sir.

Mr. TANNAHILL.—Q. Those that you didn't contest relinquished, and filed stone [3049—2719] and timber?

A. They filed stone and timber, and I have been sorry since that I didn't contest them all. I just contested people that I knew had never seen the lands.

Q. Now, this information that was given to these people is the information that is referred to in Elmer DesVoigne's (?) letter? A. Yes, sir.

Q. Shown at page 2229, 2230, 2231, of the record?

A. Yes, sir. And Mr. DesVoigne's brother-in-



(Testimony of Mrs. Kittie E. Dwyer.)

law was in that line and took Bert Chapman's homestead and filed on it and beat him out of it. [3050—2720]

**[Testimony of Mrs. Kittie E. Dwyer, for Defendants.]**

Mrs. KITTIE E. DWYER, a witness heretofore called and duly sworn, being recalled in behalf of the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?     A. Kittie E. Dwyer.

Q. You are the wife of William Dwyer, the defendant, are you?     A. Yes, sir.

Q. And you are also a defendant?     A. Yes, sir.

Q. And you are the same Kittie E. Dwyer who was called and sworn and testified in behalf of the Government, are you?     A. Yes, sir.

Q. Are you acquainted with Frank G. Morrison?  
A. I am.

Q. How long have you known him?

A. Oh, about twelve years, I think.

Q. Was you and Frank G. Morrison and his wife, Mrs. Morrison, a member of the same fraternal order or lodge in 1901?     A. We were.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Q. I will ask you if you and Mr. Dwyer and Frank G. Morrison had any trouble in that order?

Mr. GORDON.—Objected to—the same objection

(Testimony of Mrs. Kittie E. Dwyer.)

—incompetent, irrelevant and immaterial.

WITNESS.—We did.

Mr. TANNAHILL.—Q. What order was it?

A. In the Rebekahs. [3051—2721]

Q. Have you anything—any record—by which you can fix the date—about the date—that trouble occurred

Mr. GORDON.—The same objection will run to all this line of testimony?

Mr. TANNAHILL.—Yes, certainly.

WITNESS.—I have a Past Noble Grand's receipt.

Q. Will you produce it, please?

A. There was something that Mr. Morrison said about me, and we have never been on speaking terms since. (Handing document to Mr. Tannahill.)

Q. This certificate is signed by Nellie S. Ramsey, Secretary. Are you acquainted with her signature?

A. I am.

Q. And she was Secretary of the Lodge at that time? A. Yes, sir, she was.

Q. And this was issued July 4th, 1901, the day it bears date?

A. I think it was. The seal of the lodge is on it.

Q. And you was Noble Grand up to the 30th of June, 1901, as stated in this certificate? A. I was.

Mr. TANNAHILL.—We offer this certificate in evidence, and ask that it be marked the proper exhibit.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

(Testimony of Mrs. Kittie E. Dwyer.)

Said document was thereupon marked by the Reporter as Defendants' Exhibit J-1.

Mr. TANNAHILL.—Q. Now, was it before or after this certificate was issued that you had that trouble?

A. It was during the term of office, in the month of April. My term commenced on January 1st, 1901, and ended June 30th, 1901.

Q. And it was in April when this trouble occurred? [3052—2722] A. Yes, sir.

Q. Between Frank G. Morrison and Mrs. Morrison, and yourself and Mr. Dwyer?

A. Yes, sir; we have never spoken since.

Q. And Mr. Dwyer and Frank G. Morrison have not been on speaking terms since?

A. No, sir, not to my knowledge.

(No cross-examination.) [3053—2723]

**[Testimony of William F. Kettenbach for Defendants.]**

WILLIAM F. KETTENBACH, a witness heretofore called and duly sworn, being recalled in behalf of the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?

A. William F. Kettenbach.

Q. What is your age? A. 35.

Q. Where do you reside? A. Lewiston, Idaho.

Q. You are one of the defendants in this case, are you? A. Yes, sir.

(Testimony of William F. Kettenbach.)

Q. How long have you resided in Lewiston?

A. About 32 years this coming summer.

Q. Have you ever been connected with the Lewiston National Bank?      A. Yes, sir.

Q. In what capacity, and during what periods of time?

A. Oh, I went in there in 1893, I think in July, 1893, as Remittance Clerk for a period, bookkeeper for a period, and Assistant Cashier for a short period, and as President the rest of the time.

Q. You know George H. Kester, do you?

A. Very well, yes, sir.

Q. Was he an employee of the bank any of the time you was there?      A. Yes, sir.

Q. In what capacity?

A. In the capacity of Assistant Cashier, and Cashier.

Q. And do you know Clarence W. Robnett?

A. Yes, sir.

Q. Was he an employee of the bank during any of the time you was there? [3054—2724]

A. Yes, sir.

Q. During what periods of time?

A. All the time that I was there. He was in the bank when I first came into the bank.

Q. You know William Dwyer, do you?

A. Very well; yes, sir.

Q. How long have you known him?

A. Ever since he came to Clarkston—shortly after he came to Clarkston—I don't recall the dates.

Q. Have you at any time been engaged in the tim-

(Testimony of William F. Kettenbach.)

ber business with George H. Kester?     A. Yes, sir.

Q. In what way have you been associated together in the timber business?

A. Well, we have bought and owned timber jointly, and are owning it at the present time jointly in some instances; in other instances Kester has timber lands of his own that I have no interest in; and I have timber lands that he has no interest in.

Q. Then you only own an interest together in the lands that stand in the name of Kester and Kettenbach?     A. Yes, sir.

Q. George H. Kester and William F. Kettenbach?

A. Those that run to the lands—the deeds that run to Kester and I—George H. Kester and William F. Kettenbach, or Kester & Kettenbach—are owned jointly by us.

Q. You each own an equal interest?

A. Yes, in those lands.

Q. Now, have you ever had William Dwyer employed to do any work for you in cruising lands, estimating the timber, or buying timber lands for you?

A. He has filled all those capacities, I think.

Q. Now, when did you first have Mr. Dwyer employed?     [3055—2725]

A. Oh, really, when I first took an interest in timber you may say, up in what is known as the Potlatch country; he cruised out some claims up there, and on his recommendation they were purchased; and he cruised out some vacant land, and on his recommendation there was some scrip laid; and we grouped together a little bunch up there and finally



(Testimony of William F. Kettenbach.)

sold them to the Potlatch Lumber Company.

Q. And how was he paid for those services?

A. Why, he was paid for certain services in the way of a salary, or a daily salary; and all purchases by commission.

Q. You paid him \$6.00 a day for his services?

A. I believe that was his compensation. Yes, I am pretty sure of it.

Q. And where did he work for you next, and what was the class of work he did?

A. Why, my recollection is that he cruised out some State lands that the State was selling up there. I believe that was the next work that he did for us, although he might have done some in some other part of the country. Whenever we had—whenever there was work to do, he was the man that always did it for us, and I don't recollect whether he worked up in the Clearwater country for us before he cruised out the State lands, or *vice versa*. In fact, Mr. Kester gave most of his time to those things at that time, and I was busy with a good many other things, and I can't remember whether it was the State first or the Clearwater first.

Q. He did cruise some State land which you had something to do with, and also cruised some land in the North Fork of the Clearwater country?

A. Yes, sir.

Q. And that North Fork of the Clearwater country is the same as the Pierce City country, is it?

A. That is what they call it, yes, sir. The Clearwater country embraces that. [3056—2726]

(Testimony of William F. Kettenbach.)

Q. You are one of the defendants in this case, are you?     A. Yes, sir.

Q. Are you married or single?     A. Married.

Q. Have you a family?     A. Three children.

Q. And they all live in Lewiston, do they?

A. Yes, sir.

Q. Now, Mr. Kettenbach, you are one of the defendants in case No. 406, 388 and 407, are you?

A. I don't think I have been left out of any.

Q. You have read over the bills and know generally the charges in relation to the way you have acquired these lands, and the entrymen who are named in the various bills, have you not?

A. Yes, sir, I have read them over carefully. I always read over legal papers served on me.

Q. I will ask you, Mr. Kettenbach, if William Dwyer was ever in any way associated with you and Mr. Kester in acquiring any timber lands?

A. In which he might be interested?

Q. Yes.

A. No, with the exception of that State deal that I before mentioned. If we were successful in acquiring that, Dwyer would have had an interest in that.

Q. But you didn't acquire that?

A. No. It is hung up.

Q. And you paid him for his services?

A. Yes, sir.

Q. And he never has acquired any interest in any lands which you and Mr. Kester have acquired, or that you have acquired, or that Kester has acquired,

(Testimony of William F. Kettenbach.)

that you know of? A. No, sir. [3057—2727]

Q. Mr. Kettenbach, do you know William B. Benton and Joel H. Benton? A. Yes, sir.

Q. The entrymen named in bill No. 406?

A. I know both of them.

Q. Did you have anything to do with the purchase of the timber claims of William B. Benton and Joel H. Benton?

A. Well, I had something to do with Mrs. White purchasing them from Clarence Robnett.

Q. Now, what did you have to do with them?

A. Well, I had Mrs. White purchase them, along with two other claims.

Q. What two other claims?

A. Why, I wouldn't recall now the names of the entrymen. It was four claims that Robnett had that he wanted to sell. He was very anxious to sell, and I was trying to help him sell them, and he couldn't accomplish anything himself, and so I had him sell them to Mrs. White, and then after Mrs. White had them why I negotiated a sale to the Clearwater Timber Company for two of them. I think it was the William B. Benton and Joel H. Benton claims.

Q. Had you any talk or conversation with Clarence W. Robnett as to how he acquired these lands, or any understanding or arrangement he had with the entrymen, prior to the time you purchased them for Mrs. White?

A. No, sir; I never talked to Mr. Robnett about how he purchased his timber lands, or what method

(Testimony of William F. Kettenbach.)

he pursued, or anything. I never conversed with him about his deals.

Q. Has he ever had any interest with you or Mr. Kester, or either of you, or you with him, in the purchase of any timber lands at all?

A. No, sir, not at all.

Q. Mr. Robnett testified, when he was upon the stand in Spokane, that he told you the arrangements he had with Joel H. Benton and William [3058—2728] H. Benton, and that he had a prior agreement with them.

A. He never stated anything like that to me. Mr. Robnett leaned on me pretty heavy just about the time he was going out of the bank to help him, and I did help him in disposing of his timber lands, and I don't think he would have gone into the illegal part of his work if he had wanted me to dispose of his lands. He never talked to me at all about how he procured the land. I never knew about it, only that they were his, and that they stood in his name, and the abstract so showed.

Q. If he had told you that he had a prior agreement with the entrymen, would you have purchased the land?

Mr. GORDON.—Objected to as incompetent, irrelevant, immaterial, leading and suggestive.

WITNESS.—No, sir, I would not.

Mr. TANNAHILL.—Q. I will ask you if you paid for Mrs. White all those lands were worth at that time?

Mr. GORDON.—Objected to as leading.

(Testimony of William F. Kettenbach.)

WITNESS.—I felt that I did, yes, sir.

Mr. TANNAHILL.—Q. Did you know George W. Harrington?

A. Well, if that is one of the Harrington boys here in Lewiston, I know all those boys; but if it isn't one of those Harringtons here in Lewiston, I don't know that Harrington you speak of.

Q. That is a tract of land that went to the Western Lumber Company?

A. I never knew that man at all.

Q. Did you ever have anything to do with that at all? A. No, sir.

Q. Do you know Van V. Robertson?

A. I just know him by sight.

Q. Did you have anything to do with the acquiring of his land, [3059—2729] or the sale of it to the Lewiston National Bank?

A. That transaction was handled by Mr. Kester. I had nothing to do with it.

Q. You had no knowledge of any arrangements he had with anyone for the sale of the land, prior to the time he made final proof, had you? A. No, sir.

Q. Do you know John W. Killinger?

A. Yes, sir, I know him.

Q. Did you have anything to do with his acquiring any tract of land, or the sale of it to George P. Thompson? A. No, sir.

Q. You never claimed any interest in that tract of land? A. No, sir.

Q. Do you know John E. Nelson? A. Yes, sir.

Q. Did you have anything to do with the acquir-



(Testimony of William F. Kettenbach.)

ing of his tract of land, or the sale of it to Elizabeth W. Thatcher?     A. No, sir.

Q. Soren Hansen; you have already testified concerning that claim?

A. I have gone over the Hansen deal.

Q. There is nothing additional that you care to say concerning that?

A. No. That was the truth, the way it stands.

Q. You have read the evidence of Clarence V. Robnett, have you, concerning the acquiring of the lands of James C. Evans, Lou E. Bishop, Frederick W. Newman, Charles Dent, Charles Smith, and the entrymen known as the Colby and Emory entrymen, have you?

A. You mean have I read that evidence of Robnett's?

Q. Yes.     A. Yes. [3060—2730]

Q. Now, you also heard the evidence of Mr. Colby and Mr. Emory, concerning it, did you?

A. Yes, sir.

Q. Now, will you tell us, Mr. Kettenbach, your connection with that, and all you had to do with it, beginning at the first?

A. Well, if my recollection serves me, it was probably the day before Mr. Colby came in, I think he told me those parties were going to prove up the next day, and he started in to tell me that he wanted the money—to borrow the money, and I believe he said it was the next day they were going to prove up; and he explained it to me, and gave me to understand where the claims were, and how much was wanted

(Testimony of William F. Kettenbach.)

to be borrowed, and he had tried in several other instances to get the money, and I think I asked him to have Fred Emory come in to talk it over with me, because I knew Fred was a thorough woodsman, and had known it for years, he had been logging and driving on the river, and I knew he knew good timber, so I wanted him to come in and pass on it. I think he did, and I believe I agreed to loan the money, and whether it was the next day or the day after I am not sure, but I know that Mr. Colby got the money, and I am not certain, but I think I just told him to draw his check for just the amount that he would need and to attend to the whole matter. I know I was busy with something else, and I had perfect confidence in Mr. Colby, I had known him for a long time, and I think I told him to attend to the whole matter, and attend to drawing up the mortgages and notes and everything, and to deliver them to me properly perfected. Anyway, he got the money, and after they had proven up Mr. Colby came in and said that those parties felt that at the end of six months' time—I believe that was the time the mortgages was to run—that they would probably be as unable to pay it then as they were at present, and they would rather sell, and I inquired of him what they were holding them at. The price—I don't just remember now what the price was; it was satisfactory, considering the report that Mr. Emory had given me in the meantime on the claims, and I think [3061—2731] I told him I would see Mr. Kester and consult with him about it and let him know,

(Testimony of William F. Kettenbach.)

which I did, and it was satisfactory, and he then attended to the purchase the same as he was to have attended to the mortgages, and the claims were purchased and paid for.

Q. I will ask you if you remember of asking Mr. Colby if they had proved up and had their final receipts?

A. Well, I don't know as I can remember that. I presume, though, that I did, because they wouldn't be in a position to sell or be talking about selling unless they had proved up.

Q. Now, do you remember whether there was four of them that were sold at that time, and then two later?

A. That is my distinct recollection at this time, that there was four at one time and two shortly after.

Q. Now, was there any time that you and Mr. Colby and Emory and George H. Kester talked this matter over in your office?

A. Kester never talked it over with Mr. Colby or I, or Mr. Emory or I, or Mr. Colby, Emory and myself. Kester had nothing to do with it except agreeing with me that it was a good purchase at the time I went to him to ask him if he thought we had better buy. I had already agreed to loan the money on them. That was a personal matter with myself. Kester wouldn't have had anything to do with the loaning feature of it if the loans had gone through to completion. Kester had absolutely nothing to do with the transaction or any conversation at all.

(Testimony of William F. Kettenbach.)

Q. I will ask you if Mr. Emory or Mr. Colby, or either of them, ever came into your office and told you and Mr. Kester together, or you individually, that they had an arrangement with these entrymen to pay all expenses of filing upon the land and give them \$100.00 or \$200 for their right?

A. No, sir. Nothing like that ever was mentioned in any conversation with either of the gentlemen.

Q. Do you know Pearl Washburn? [3062—2732]

A. Well, I can't say that I do. I knew her husband.

Q. Did you have anything to do with the acquiring of her tract of land, or the sale of it?

A. No, sir. I loaned some money, I believe, on the Pearl Washburn claim. Her husband conducted the transaction. The land was subsequently purchased by James McGrane, who runs the Bollinger House, and as I remember now Mr. McGrane paid me my mortgage when he purchased the land.

Q. Do you know Frederick W. Newman?

A. Yes, sir.

Q. Do you know anything about his entry?

A. Well, that was one of the claims that Mr. Colby attended to the purchase of, I believe.

Q. And your testimony applies to that claim the same as to these other claims?

A. Yes, sir. I never heard of these people until the day—I think it was the day before they proved up. I didn't know they had any filings or claims or anything. The transaction came up just as I have stated.

(Testimony of William F. Kettenbach.)

Q. Do you know George Morrison?

A. I wouldn't know him, I don't believe, if I was to see him.

Q. Do you know anything about his acquiring title to a tract of land, and also Edward M. Hyde, and the sale of it?

A. Now, I couldn't be very clear on those two claims. I have a dim recollection that they are a couple of young fellows that proved up on some claims, some of Robnett's entrymen; that is, he located them, he and Knight, and they wanted to sell their claims after they proved up. I believe a fair price was placed on them and we bought them; but I don't know that I had anything to do especially with the transaction, although I may have. My mind isn't clear on that.

Q. Had you any understanding or agreement with either George Morrison or Edward M. Hyde that you would purchase the land, before they [3063—2733] made their final proof? A. No, sir.

Q. Do you know Drury M. Gammon?

A. I know him, yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land, or the sale of it?

A. No, sir.

Q. That was conducted by Mr. Kester, was it?

A. Mr. Kester attended to that, I believe.

Q. Do you know Guy L. Wilson? A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land? A. No, sir.

Q. Or the sale of it? A. No, sir.



(Testimony of William F. Kettenbach.)

Q. Do you know Frances E. Justice?

A. I know the lady, yes, sir.

Q. Did you have anything to do with her acquiring title to a tract of timber land, or the sale of it?

A. I did not. I purchased—I was jointly a purchaser of the land. Not Frances A. Justice—I will take that back—Guy L. Wilson.

Q. Did you have any prior agreement with Guy L. Wilson to purchase his land? A. No, sir.

Q. And have you any interest, or have you ever claimed any interest, in the Frances A. Justice claim? A. No, sir.

Q. Do you know Edna P. Kester?

A. Yes, sir.

Q. Have you any interest in her tract of land? [3064—2734] A. Not any.

Q. Or have you ever had? A. No, sir.

Q. And have you any interest in Elizabeth Kettenbach's timber claim? A. Not any.

Q. And have you ever had? A. No, sir.

Q. Have you any interest in the claim of William J. White, Elizabeth White and Mamie P. White, or Martha E. Hallett, or either of them?

A. No, sir.

Q. Have you ever had any interest in them?

A. No, sir.

Q. You know Martha E. Hallett, do you?

A. Yes, sir.

Q. Had you anything to do with her acquiring title to a tract of timber land? A. No, sir.

Q. Have you any interest in it? A. No, sir.

(Testimony of William F. Kettenbach.)

Q. Have you ever had?      A. No, sir.

Q. Do you know Daniel W. Greenburg?

A. Yes, sir.

Q. Did you ever have anything to do with his acquiring title to a tract of timber land?      A. No, sir.

Q. Did you have anything to do with the purchase of it, any more than to purchase it jointly with Mr. Kester?

A. Why, Mr. Kester attended to the transaction and the purchase. I own a half interest in it.

Q. You had no understanding or agreement with him for the purchase [3065—2735] of his land, prior to the time he made final proof, did you?

A. No, sir.

Q. Do you know David S. Bingham?

A. Yes, sir.

Q. And do you know Charles Taylor and Edgar J. Taylor, and Joseph H. Prentice and Edgar J. Dammarell?      A. Yes, sir.

Q. And Jackson O'Keefe?      A. Yes, sir.

Q. And the entrymen known as the O'Keefe entrymen, do you?

A. Why, I don't believe that I personally know Dammarell; I do Prentice, and I know the Taylor boys casually; and Dave Bingham, I know him very well.

Q. Did you have anything to do with their acquiring title to a tract of timber land?

A. No, sir.

Q. And did you have anything to do with the details of the purchase of it?      A. No, sir.

(Testimony of William F. Kettenbach.)

Q. And did you have any knowledge of any prior agreement that was made for the purchase of their lands, or any understanding, prior to the time they had made their final proof? A. No, sir.

Q. Do you know William McMillan?

A. I know Mr. McMillan, yes, sir.

Q. Did you have anything to do with his acquiring title to his tract of timber land? A. No, sir.

Q. Have you any interest in it?

A. Why, I believe that that claim was purchased by Kester and Kettenbach. Mr. Kester attended to the transaction, though. I am not sure—I couldn't tell without looking at my record about these claims.  
[3066—2736]

[Page 3067 omitted from original Certified Transcript of Record.]

that claim may not have been purchased by us at all. I can't actually say.

Q. You had no understanding or agreement with him for the sale or purchase of his land, prior to the time he made final proof? A. No, sir.

Q. And the Hattie Rowland claim was purchased by Kittie E. Dwyer. Did you have anything to do with her acquiring title to a tract of timber land?

A. No, sir.

Q. And William E. Helkenberg, did you have anything to do with his acquiring title to a tract of timber land? A. No, sir.

Q. And you had nothing to do with the purchase of it?

(Testimony of William F. Kettenbach.)

A. Mr. Kester attended to it, if it was purchased. Along in the period when a lot of claims were purchased by us about that time I was busy with other things, and didn't attend to the purchase or the detail matters.

Q. Do you know William Haevernick and Elma Haevernick?

A. I know Mr. Haevernick; I don't know his wife.

Q. Did you have anything to do with their acquiring title to a tract of timber land?

A. No, sir.

Q. Did you have any interest in it?      A. No, sir.

Q. Did you ever have any interest in it?

A. No, sir.

Q. You never had any interest in it?

A. No, sir.

Q. Do you know Garry Van Artsdalen?

A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land? [3068—2738]

A. No, sir.

Q. You have no interest in it, have you?

A. Not that I know of. We bought a piece of land from Garry Van Artsdalen, but I don't know whether it was a timber claim.

Q. This is the claim you sold direct to the Clearwater Timber Company?

A. No, sir; I have no interest in that.

Q. And do you know Robert O. Waldman?

A. Yes, sir.

Q. Did you have anything to do with his acquiring

(Testimony of William F. Kettenbach.)

ing title to a tract of timber land? A. No, sir.

Q. You had no understanding or agreement with him? A. No, sir.

Q. Do you know Rowland A. Lambdin?

A. Yes, sir.

Q. Did you have anything to do with his acquiring title to a tract of timber land? A. No, sir.

Q. You know nothing about it?

A. No. I didn't handle that transaction, either.

Q. Do you know Ivan R. Cornell? A. Yes, sir.

Q. Do you know anything about his acquiring title to a tract of timber land?

A. I know that he acquired a quarter section of land under the timber and stone act.

Q. Did you have any understanding or agreement with him for the purchase of this land, prior to the time he made his final proof? A. No, sir.

Q. Do you know Fred W. Shaeffer?

A. Yes, sir. [3069—2739]

Q. Did you have any understanding or agreement with Fred W. Shaeffer for the purchase of this tract of land, prior to the time he made final proof?

A. No, sir.

Q. Do you know Carrie D. Maris?

A. No, I don't know her. I know who she is.

Q. You and Mr. Kester purchased this claim that was proved up on by Carrie D. Maris, did you?

A. If that is the claim we purchased from Robnett, yes.

Q. Now, what did you have to do with the purchase of that claim, if anything?



(Testimony of William F. Kettenbach.)

A. Why, I had nothing, only paying for half of it; but I understood from Mr. Kester that he offered Robnett \$100.00 more than somebody else offered for the claim.

Mr. GORDON.—Objected to as hearsay, and incompetent, irrelevant and immaterial.

WITNESS.—It happened right there in the bank, when he made the statement.

Mr. TANNAHILL.—Q. Did you have any notice or knowledge of any arrangement that Clarence W. Robnett had with Carrie D. Maris for the acquiring of this tract of land?

A. No, sir.

Q. Did Mr. Robnett ever tell you anything about his arrangements with her? A. He never did.

Q. Do you know John H. Little? A. Yes, sir.

Q. Did you have anything to do with the purchase of this tract of land? A. Yes, sir.

Q. What did you have to do with that? [3070—2740] A. I purchased it from Mr. Little.

Q. What led up to your purchase of it?

A. I first loaned Mr. Little the money. Mr. Robnett had agreed to loan him the money and had apparently fallen down. He had arrangements all made, I guess, to let him have the money, through Mr. Thatcher, and Mr. Thatcher failed him at the eleventh hour, and he came to me, and after looking over the estimates—he already had the estimates; Al. Smith is the man who made the estimate, and I had a good deal of confidence in Mr. Smith and in his ability—and I loaned the money on several

(Testimony of William F. Kettenbach.)

claims right at the same time, and Little's was one of them; but I never knew of them or knew anything about them until just at the time they had either proven up or were just going to prove up, and Robnett first approached me on the proposition of letting the entrymen have the money, I think, it was the day they proved up, or the day after, I am not sure; but they had either nine or eleven claimants that were wanting to borrow money for their lands, and I looked over the report on all of them, and finally decided to take them.

Q. Well, how long after they had proved up was it before you purchased the lands?

A. Oh, at different times. Most of them run, though,—I think the mortgages run for six months or a year, and I don't think I purchased any of them until after the mortgages were due, and some of them ran away past due. This Little claim, I think, is one of the claims that ran the longest.

Q. Did you have any understanding or agreement with Robnett, or with Little or anyone else, for the purchase of this land, prior to the time he made final proof? A. No, sir.

Q. Do you know Ellsworth M. Harrington?

A. Yes, sir.

Q. And Wren Pierce?

A. Yes, sir. [3071—2741]

Q. Did you have anything to do with the purchase of those tracts of land?

A. They come in under that same head. I think they were proven up at that time or about that time,

(Testimony of William F. Kettenbach.)

and they were among those that I took the mortgages on.

Q. Do you know Benjamin F. Bashor?

A. Yes, sir.

Q. Did you have anything to do with acquiring this tract of land?

A. Yes, sir; I purchased that land.

Q. And how did you purchase it?

A. Well, it was—I made him an offer on it. I had a mortgage on it, and it was past due, or, anyway, due, and he attempted to sell it several times and couldn't do it, and I finally made him an offer and he accepted it, and I purchased the claim.

Q. Was there any negotiations for the purchase of this land, prior to the time he proved up?

A. No, sir.

Q. Do you know Francis M. Long, John H. Long, and Benjamin F. Long?

A. Yes, sir.

Q. Did you have anything to do with the purchase of their tracts of land?

A. I bought their claims, too.

Q. What did you have to do with them?

A. I held the mortgages on them, taken at that same time. They were some that Robnett presented to me for my approval at that time, and I took the mortgages, and held them until they were due or about due, and perhaps past due, I can't just remember. Anyway, they attempted to sell them, and I tried to get them to hold their claims, but they wanted to get rid of them; so I made them an offer,

(Testimony of William F. Kettenbach.)

and they accepted, and I bought them. [3072—2742]

Q. Do you know Bertsell H. Ferris and George Ray Robinson?      A. Yes, sir.

Q. Did you have anything to do with the purchase of those tracts of land?

A. I purchased those two claims, yes, sir.

Q. What did you have to do with them?

A. I first held the mortgage on them. They came through this offer of Robnett's to me to take the mortgages on them. I held them till they were due or past due, and in fact I tried to get them to hold them longer and pay me. I knew those boys very well. They were here in town.

Q. Did you have any negotiations for the purchase of their lands, prior to the time they made final proof?      A. No, sir.

Q. Did Robnett tell you anything about the arrangements he had with the entrymen, prior to the time you purchased the lands?

A. No, sir, he didn't.

Q. And Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, and Joseph H. Prentice are the O'Keefe entrymen, are they?      A. Yes, sir.

Q. And have you testified to everything you had to do or your connection with the purchase of those people's tracts of land?

A. Yes, sir. Mr. Kester attended to those transactions. I never personally attended to the purchasing of them.

Q. I will ask you if you had any notice or knowl-

(Testimony of William F. Kettenbach.)

edge or any arrangement for the sale of these tracts of land, prior to the time they made their final proof?

A. No, sir.

Q. Do you know Fred E. Justice?

A. I knew him.

Q. Did you have anything to do with the purchase of this tract of land? [3073—2743]

A. Only to pay for my part of it, I guess. I conducted no transactions for it, if we purchased it. I don't know even whether we purchased it or not.

Q. The negotiations were carried on by Mr. Kester for the purchase? A. Yes, sir.

Q. And did you have any notice or knowledge of any arrangements for the purchase of this tract of land, prior to the time final proof was made?

A. No, sir.

Q. Edgar H. Dammarell is one of the O'Keefe entrymen, and comes under the same circumstances and arrangements you have testified to?

A. Yes, sir.

Q. Concerning the O'Keefe entrymen?

A. Yes, sir.

Q. Do you know anything about the purchase of the lands of Mary A. Loney, Frank J. Bonney, James T. Jolly, Effie A. Jolly, Charles S. Myers, Jannie Myers, and Clinton E. Perkins, the entrymen known as the Steffey entrymen?

A. I never conducted any purchases. Mr. Kester attended to that. I either was away or busy with something else. I know that whenever I was called upon by Mr. Kester to pay my half of any



(Testimony of William F. Kettenbach.)

claims purchased that we were jointly in on, why I did so. I didn't have anything to do with any of those claims.

Q. I will ask you, Mr. Kettenbach, if you was present and heard Mr. Steffey testify that at one time he came down to borrow some money for these entrymen to prove up with, and that you sent him to the Idaho Trust Company and told him that he could get the money there, and he went to see Edward C. Smith, of the Idaho Trust Company, and Mr. Smith knew nothing about it, and he came back and told you, and you told him to draw his check on the bank, and you let him have the money in that way. [3074—2744]

A. I remember Mr. Steffey testifying to that effect, and I have thought over that several times, but I can't remember any such conversation, or ever having had such a conversation with Mr. Steffey about that. Mr. Steffey, I will say that whenever he came into the bank he invariably transacted his business with Mr. Kester or Mr. Chapman. I never personally, I don't think, conducted any transactions or business with Mr. Steffey.

Q. Mr. Kettenbach, on page 1631 of the record, Clarence W. Robnett, when he was upon the stand as a witness for the Government, in Spokane, testified in response to the following question:

“Q. Now, what was the discussion that these two gentlemen had?

“A. The timber matters, of other people locating around from out of Moscow, and the people in Lew-

(Testimony of William F. Kettenbach.)

iston were commencing to get interested, so Mr. Kester and Mr. Kettenbach discussed it quite often, in regards to going into the timber business themselves, and brought up Mr. Dwyer's knowledge of the timber, and that he was a timber man from the East, Minnesota, and so it kind of got to be general conversation there, until along in March, some time in March or April, why, Mr. Kester and Mr. Kettenbach were talking about the timber situation, and they stated that they believed they could make a great deal of money out of the timber if they could get in connection with Mr. Dwyer and form a partnership and let Mr. Dwyer do all the work in the timber."

Did you have any such conversation as that in the presence of Mr. Robnett?

A. No, sir.

Q. Or at all?      A. No, sir.

Q. "Q. Now, was anything said at that time relative to the money end of the transaction?

"A. No, there wasn't anything said in regards to that. They went on ahead and stated, though, talked about Mr. Dwyer's knowledge of the timber, and they spoke of some timber that he knew about, claims [3075—2745] that he had already cruised and had knowledge of, said he could put people on."

Did you have any such conversation as that?

A. No, sir.

Q. On page 1632 of the record Robnett also testifies:

"A. In the bank, in the President's private office,

(Testimony of William F. Kettenbach.)

and I says—" Let's see: "The first conversation in regards to that was when I called on Mr. Kettenbach in his private office and had a talk with him, shortly after this conversation.

"Q. Well, now, state what was said.

"A. I went into the office there, Will Kettenbach's private office, and—

"Q. Was that in the bank?

"A. In the bank, in the President's private office, and I says, 'Will, I overheard a conversation between you and George the other day, and if there is any money to be made out of the timber I would like to get in and work with you and make some money,' and Will says, 'Clarence, we would like to help you, but we are going into arrangements with Mr. Dwyer and George and myself,' and he says, 'we are to be equal partners, and I don't see any chance for you to get in, but you can have a talk with George, and we will do all we can for you.' "

Did you have any such conversation as that with Mr. Robnett?

A. No, sir, we did not.

Q. Robnett also testifies:

"A. Yes, the plan that they talked over at different times there was relative to getting entrymen to file on the claims and pay them so much for their rights, and the matter was brought up at the time I had a talk with Mr. Kester, what each one was to do."

Did you have any such conversation as that?

A. No, sir.

(Testimony of William F. Kettenbach.)

Q. In the presence of Mr. Robnett?

A. No, sir. [3076—2746]

Q. On page 1636 Clarence W. Robnett also testifies:

“Q. Do you remember whether or not you had a talk in the presence of Mr. Kettenbach at about the same time?

“A. Yes, sir. We went into the directors’ room, and Will Kettenbach was present, and the matter was thoroughly discussed, and mention was made of the cabin, that we had to pay \$25.00 a claim for cabins, and \$50.00 a claim for location fee.” That is these claims up on the North Fork that Dominick Cameron had located, that Mr. Robnett was referring to, and he had related a conversation which he claims he had with Kester up in the timber, and then when he came back down he says they went into the bank, and this was discussed in your presence. Was anything of that kind discussed in your presence?

A. No, sir.

Q. Robnett also testifies, on page 1649:

“Q. Now, was anything done further relative to the claims you have just referred to?

“A. Well, yes; when we returned to Lewiston, when Mr. Kester went home, I went right on up to the bank and met Mr. Will Kettenbach and told him just what we had done, arranged about it, and he asked about the Caldwell claim and the Jack Lowe claim, about Otto Kettenbach and his brother, and was surprised when we came back so soon, and he wanted to know where George was, and I told him

(Testimony of William F. Kettenbach.)

that George had gone on home right from the train."

Do you remember any such conversation as that?

A. No, sir, I don't.

Q. On pages 1640 and 1641 Robnett also testifies:

"Q. Now, state where that was and when it was, relative to the entry of the claim."—That refers to the Lambdin claim.

"A. Why, it was in Will Kettenbach's private office.

"Q. In the bank was that? A. Yes.

"Q. Now, state what it was. [3077—2747]

"A. Why, George went into Mr. Kettenbach's office and stated, 'Well, I have seen Lambdin on the street, and he has agreed to go up and file on a claim for \$100.00 and deed it over after proof.' And Will asked George, 'Do you know whether he is all right?' And George stated, 'Yes, I do.' And Will stated that if George knew he was all right, for him to go ahead and make the arrangements for Bill to take him up into the timber."

Did you have any such conversation as that?

A. No, sir, I did not.

Q. On page 1649 of the record the witness Robnett also testifies:

"Q. Now, I will ask you if you ever heard a conversation between Mr. Kester and Mr. Kettenbach relative to the Shaeffer claim while Mr. Dwyer and Mr. Shaeffer were in the timber? A. Yes.

"Q. Now, tell what you know about that.

"A. It was,—George says to Will, 'Shaeffer and Bill are up in the timber to see the claim that Fred is



(Testimony of William F. Kettenbach.)

going to file on,' and he says, 'I had quite a talk with Shaeffer and told him I would give him \$100.00 for his right, and he is to deed the claim over as soon as he makes proof, and he is going to use the money to make a payment on his lot.' "

Did you have any such conversation as that with Mr. Kester?     A. No, sir.

Q. And at page 1650 of the record Robnett also testifies that you asked Kester when they would be back, and Kester says, "Well," he says, " 'they will be back,'—Mr. Kettenbach asked George when they would be back, and he said, 'They will either be back this evening or to-morrow evening.' "

Did any such conversation as that occur?

A. No, sir, it never occurred.

Q. "Q. Anything else said about it?

"A. Why, he says, 'What is the value of that claim?' and he says, [3078—2748] 'It is worth \$3,000.00 or better.' "

Was that statement made?     A. No, sir.

Q. The witness Robnett also testified:

"Q. Do you remember ever hearing a conversation between Mr. Kester and Mr. Kettenbach relative to those gentlemen taking up claims?" That is, John Roos and Sam Hutchings.     A. Yes, sir.

"Q. Well, state what it was and where it was.

"A. It was in Mr. Kettenbach's private office.

"Q. Well, who did the talking?

"A. Why, Mr. Kester came in and says, 'Will, I have seen Johnny Roos and Sam Hutchings out on the street, and I have been talking to them about tak-

(Testimony of William F. Kettenbach.)

ing up timber claims, and I believe they will go up into the timber and file, and will deed over their claims for a couple of hundred dollars apiece.' "

Did you have any such conversation as that with Mr. Kester?

A. No, sir, nothing like that at all.

Q. "Q. Do you remember whether Mr. Kettenbach said anything at that time?

"A. He says, 'That will be all right. Has Bill got some claims for them at the present time?' And Mr. Kester says, 'Well, I will see him either this evening or to-morrow morning, and I think that he has.' "

Did you have any such conversation as that?

A. No, sir.

Q. Robnett also testifies, on page 1651 of the record:

"Q. What was said between the defendants?

"A. Why, Mr. Kester came into Mr. Kettenbach's private office and said, 'I met an old schoolmate of mine from Portland'—this is referring to the Ivan R. Cornell matter. 'He went to school with me at Bishop Scott's Academy, and he seems to be in pretty hard straits, and I spoke to him about taking up a timber claim and that we [3079—2749] would give him \$100.00, and he needs the money bad, and I think he is going to take the offer, and I believe we can put him on the claim that Bill Dwyer is holding down as a homestead.' And Will asked George all about him, and wanted to know if he could be depended on, and George says, 'Yes, I think he can; he needs the money, and I believe he will come through

(Testimony of William F. Kettenbach.)

and sell his right for \$100.00,' and he says, 'Well, go see Bill and see if he can take him up to the timber, and if everything is all right with you we will go ahead.' "

Did you have any such conversation as that?

A. No, sir, nothing like that.

Q. On page 1654 Robnett also testifies:

"Q. Do you remember whether Mr. Kester was there or not?

"A. Well, now, there was several at one conversation that took place in Mr. Kettenbach's office, where Mr. Dwyer and Mr. Kettenbach and Mr. Kester were present, all three of them.

"Q. Now, who was the spokesman at that conversation? Tell the conversation as well as you can.

"A. They were discussing in regards to the homesteads, homestead entries of the timber, that were just thrown open, and Bill Dwyer stated that he was going to contest all those entrymen and locate them, and Will Kettenbach asked if there was any limitation to contests, to how many contests one party could file, and Mr. Dwyer said, no, there wasn't, he could file as many contests as he wanted to, and he could put whoever he wanted to on the timber if he won out, and Will told him to go ahead and contest them and get all the claims that he could."

Did any such conversation as that occur?

A. No, sir.

Q. Did you and Dwyer or Kester, or either of you, ever have any talk in regard to the filing of contests?

A. No, sir.

(Testimony of William F. Kettenbach.)

Q. "Did Mr. Dwyer discuss the character of these entrymen, or [3080—2750] how they had located on the homesteads?

"A. He said, 'They are simply holding down the claims under the homestead to beat the State out, to keep everybody else out, and as soon as,—they intend to relinquish and file a timber and stone entry on it, and I am just going to beat them to it before they get a chance to relinquish their homestead filing.' "

Did anything of that kind occur? A. No, sir.

Q. On page 1656 Clarence Robnett also testifies:

"Q. When was that?

"A. That was a short time after this. Will Kettenbach and I were standing there talking, along during the noon hour, between twelve and one, and Mr. Dwyer came into the bank, and Will says, 'What have you been doing to-day, Bill?' And he says, 'I have been filing contests.' 'How many did you file?' 'Fourteen or eighteen.' And I spoke up and I says, 'What are you going to do, Bill,—take all those homesteads up there?' And he says, 'Yes,' he says, 'I will file forty more if it is necessary.' "

Did any such conversation as that take place?

A. No, sir.

Q. On the same page the witness also testifies concerning a conversation which he says took place between Kester and yourself and Jackson O'Keefe:

"Q. I will ask you to state whether or not you were ever a party to a conference between Mr. Jackson O'Keefe and any or all of the defendants?

"A. I was present at a number of conversations

(Testimony of William F. Kettenbach.)

that took place between Mr. Kester and Mr. O'Keefe, and Mr. Kester and Mr. Kettenbach and Mr. O'Keefe.

“Q. Well, did you just listen, or were you called into the conversation?

“A. No; they were just conversations that took place there relative [3081—2751] to the timber, and I overheard them as I was going ahead with my work. \* \* \* Why, Mr. Kester and Mr. Kettenbach and Mr. O'Keefe came out of the directors' room; they were in there having a talk, and they stopped in there while Mr. O'Keefe was waiting for the stage to go to Asotin, and Mr. Kester asked him regarding the securing of certain entrymen to take up claims, and he spoke about certain parties in Asotin that he would get.”

Did any such a thing as that occur?

A. No, sir. I never had any personal dealings with O'Keefe or any conversation about this in my life. He is an old friend of Kester's, and he always transacted his business with Kester in the bank. I never talked matters over with him at all.

Q. Did you ever have any talk with him regarding the taking up of a timber claim? A. No, sir.

Q. On page 1661 Robnett also testifies:

“Q. Now, did you hear anything of the arrangements that they had, or were there any?

“A. Yes; they spoke then relative to what, about what they would want, and he said, ‘Oh, I think you can get them for perhaps \$150.00 apiece, maybe you may have to pay them \$200.00, but anyway you can



(Testimony of William F. Kettenbach.)

get them at what is right, and we can depend on them.' "

Did any such conversation as that occur?

A. No, sir.

Q. "Q. Now, was anything said about the money at that time for expenses?

"A. Yes; they said whatever their expenses are, Mr. Kester says, 'Jack, whatever their expenses are going up there you pay it by drawing checks and keeping a memorandum of it, so we will know just what it is.' "

Did anything of that kind occur?

A. No, sir. [3082—2752]

Q. On page 1665 the witness testifies concerning a conversation he claims he overheard between you and Mr. Kester, relative to Mr. Goldsmith appointing William Dwyer assistant land selector:

"Q. Well, state what you can relative to the conversation, as near as you can.

"A. Well, the gentlemen were sitting in Mr. Kettenbach's private office, and George spoke up and asked if there was any way that Bill could get the position, so that he could go up there and pick out this land that the State was going to select, and also to catch on to land that they could get a hold of, and Will Kettenbach spoke up and said, 'Yes, I think I can arrange that'; he says, 'Goldsmith, I think, will do what I want him to, and I will have a talk with him and see if I can't have it arranged.' Well, George stated if it could be done why it would very likely help them out a great deal, and be a good thing."

(Testimony of William F. Kettenbach.)

Did anything of that kind occur?

A. No, sir; I never had any such conversation.

Q. Did you ever have a talk with Mr. Goldsmith concerning the appointment of Mr. Dwyer as assistant land selector? A. I did not.

Q. On page 1666 Robnett also testifies:

“A. ‘Of course,’ he says, ‘if he goes up into the timber there to make the selections of the State land, why he could leave out the claims that we want, and make a notation of them, so that we can locate the claims.’ ”

Did anything of that kind occur? A. No, sir.

Q. On the same page he also testifies:

“A. Well, Mr. Kester said, ‘Well, Will, you see Mr. Goldsmith and see what can be done, and if we can arrange that Bill can go up into the timber with him,’ and Will said, ‘All right, I will get word to Mr. Goldsmith to come in and see me.’ ”

Did anything of that kind occur? [3083—2753]

A. No, sir.

Q. On the same page the witness also testifies:

“Q. Well, now, did you hear anything that was said relative to Mr. Dwyer’s employment?

“A. Yes. Mr. Kettenbach says, ‘Mr. Goldsmith, what I sent for you for was to see if we couldn’t arrange to appoint Mr. Dwyer as one of your selectors to cruise the timber and make the selections for the State,’ and Mr. Goldsmith says, ‘Well, I really don’t know how I can do that, but I will see.’ ”

Did anything of that kind occur?

A. No, sir. I never discussed those things with

(Testimony of William F. Kettenbach.)

Mr. Goldsmith.

Q. "Q. Did he give any reason?

"A. Well, he said Mr. Dwyer was out of the State, and there might be objections to it, and he thought that perhaps already there had been people spoken to by Mr. Jackson for that position, but if he could arrange it he would do so."

Did anything of that kind occur?

A. No, sir.

Q. "Q. Well, did Mr. Kettenbach have anything to say about the objections that were raised?

"A. Well, he said that didn't make any difference. He says, 'You can state that the only man that knows anything in regards to that country out there is Mr. Dwyer, and he is just across the State line, and Clarkston is practically the same as Lewiston; he is just across the river, and there is no reason why that should make any difference, and he is operating up there in the timber, anyway, and that wouldn't be any reason why you should not get a man across in Clarkston.' Mr. Goldsmith said, 'I will see what I can do, and if I can possibly arrange it why I will have Mr. Dwyer go up with me, and I will let you know.' And a few days after that Mr. Goldsmith came into the office to see Mr. Kettenbach, and told him he could arrange to employ Mr. Dwyer."

[3084—2754]

Did you have any such conversation as that?

A. No, sir.

Q. Did you ever ask Mr. Goldsmith to employ Dwyer? A. I did not.

(Testimony of William F. Kettenbach.)

Q. Or have any conversation with him about it at all?     A. No, sir.

Q. On page 1668 Robnett also testifies:

“Q. Now, tell what you know about that?”

“A. Well, Mr. Goldsmith came into Mr. Kettenbach’s private office and Mr. Kettenbach handed him a plat and a paper.

“Q. Well, now, do you know what this paper was?”

“A. Nothing more than what Mr. Kettenbach told me afterwards. I didn’t hear the conversation that took place there, and after Mr. Goldsmith went out I asked Mr. Kettenbach if he had arranged to hold out my claim.

“Q. What was your claim?”

“A. That is the claim known as the Mrs. Harris claim.”

Did any such conversation as that occur?

A. No, sir.

Q. Did you ever give Mr. Goldsmith any plats at all.     A. No, sir.

Q. Mr. Robnett also testifies:

“A. That is the claim known as the Mrs. Harris claim; and he says, ‘No, Clarence, I forgot all about it, but’ he says, ‘I gave him a list of claims that Bill had given me to have him hold out’—that there were maps prepared by Bill—‘but,’ he says, ‘if you will speak to Mr. Goldsmith about it he will hold out your claim. Write out the numbers of it on a slip of paper and hand it to him and tell him that I told you to give it to him.’ ”

Did anything of that kind occur?

(Testimony of William F. Kettenbach.)

A. No, sir. [3085—2755]

Q. Or did you have any such conversation as that?

A. No, sir.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [3086—2756]

On Wednesday, the 19th day of October, 1910, at ten o'clock A. M., the hearing was resumed.

WILLIAM F. KETTENBACH, a witness heretofore called and duly sworn, and having been recalled in behalf of the defendants, resumed the witnessstand for further direct examination, and testified as follows, to wit:

Direct Examination (Continued).

(By Mr. TANNAHILL.)

Q. Mr. Kettenbach, when we adjourned yesterday evening I was asking you concerning a conversation which Clarence W. Robnett testified that he had with you regarding the leaving out of a timber claim which he had located, or which he was interested in, known as the Mary J. Harris claim, referred to on page 1668 of the record. Mr. Robnett testified on page 1668: "That is the claim known as the Mrs. Harris claim; and he says, 'No, Clarence, I forgot all about it, but,' he says, 'I gave him a list of claims that Bill had given me to have him hold out'—that there were maps prepared by Bill—'but,' he says, 'if you will speak to Mr. Goldsmith about it he will hold out your claim. Write out the numbers of it on a slip of paper and hand it to him and tell him that I told you to give it to him.' " I believe you testified that you had no such conversation as that with Mr. Robnett?



(Testimony of William F. Kettenbach.)

A. No, sir; I had no such conversation.

Q. And you made no such statement to him?

A. No, sir.

Q. Did he ever request you to hold out any claim—to ask Mr. [3087—2757] Goldsmith to hold out any claim for him from the State? A. No, sir.

Q. On the same page Mr. Robnett also testified as follows:

“Q. Now, did you hear any conversation between Mr. Kettenbach and Mr. Dwyer just prior to that time? A. Yes.

“Q. Well, state what that was?

“A. Well, Mr. Dwyer came in from the timber a few days ahead of Mr. Goldsmith, a day or two, and he came in there—

“Q. In where?

“A. In Mr. Kettenbach's private office.

“Q. Yes?

“A. And Will says, ‘Well, hello, Bill, when did you get back?’ He says, ‘I have just got in from the train.’ He says, ‘How is everything going?’ He says, ‘All right.’ He says, ‘Have you got memorandums made of the land you want out—not selected by the State?’ and he says, ‘Yes,’ He says, ‘Get them up in shape and I will see Goldsmith and give them to him.’ ”

Did you have any such conversation as that?

A. No, sir.

Q. He also testifies:

“Q. Now, was anything said about Mr. Melvern Scott at that time?

“A. Well, he said that Melvern Scott had come

(Testimony of William F. Kettenbach.)

down with Goldsmith at the time he came in.

“Q. Well, do you know whether anything was said about Mr. Scott and Mr. Fitzgerald relative to squatters?

“Question withdrawn.

“Q. Now, did you see Mr. Goldsmith relative to the Harris claim? A. I did.”

Did anything of that kind occur in your presence?

A. No, sir. [3088—2758]

Q. Or to your knowledge? A. No, sir.

Q. On page 1669 Mr. Robnett also testifies:

“Q. Well, do you know whether he held the claim out or not?

“A. No. The claim was in the first papers that was put in of the timber—or in his report—that claim was included; and I spoke to him about it, and he says, ‘Well,’ he says, ‘I think that can be arranged later, when they have got to make an amended filing to these conflict entrymen, and if they don’t go ahead and contest them or make entries before a specified time why it will be dropped out, and you can go right ahead.’ ”

Did anything of that kind occur? A. No, sir.

Q. Did you have any such conversation as that?

A. No, sir.

Q. “Q. Do you know of any other land than this claim that you have referred to that the defendants desired Mr. Goldsmith not to include in the State selections?

“A. Well, after the State had made the filing of contest claims, Mr. Kester and also Mr. Kettenbach

(Testimony of William F. Kettenbach.)

both made the statement that there would be plenty of timber left after the State went through; that they wasn't going ahead with the contest of entry-men; that they just had all the timber they wanted for all of their entrymen, and that included a number of fine homesteads up there of people that were squatting on the land."

Did you have any such conversation as that?

A. No, sir.

Q. On page 1671 Mr. Robnett also testifies:

"A. I wasn't in his office; I was standing there waiting for Mr. Goldsmith to come out so that I could find out whether Mr. Kettenbach had made any mention of my claim. [3089—2759]

"Q. That is the Harris claim you mean?

"A. Yes. Mr. Kettenbach and I had had a conversation prior to that time in which this was discussed, what they were going to do, and I spoke to him and told him to put my claim in."

Did you have any such conversation as that with Robnett? A. No, sir.

Q. Now, Mr. Robnett also testified that your wife, Mrs. Kettenbach, was in this line-up of April 24th. State whether or not she was.

A. Mrs. Kettenbach never was in the line-up, never took a timber claim, and never even was upstairs where the land office was at any time anybody was taking up land.

Q. And state whether or not she was in the line-up for any time, or for holding a place for anyone else?

A. She was not. As I say, she never was upstairs

(Testimony of William F. Kettenbach.)

at any time when there was a line-up. I doubt whether she was around the building. I know she never took up a claim, or had anything to do with taking one.

Q. On page 1673 Robnett also testifies:

“Q. Well, how did he happen to get them from you?

“A. I went to the land office and got them for him.”

Well, I will go back farther:

“Q. Now, do you know where these 18 people that you have referred to received their filing papers?

“A. From Mr. Dwyer.

“Q. And do you know where Mr. Dwyer got the papers?      A. He got them from me.

“Q. Well, how did he happen to get them from you?

“A. I went to the land office and got them for him.

“Q. Were you directed by anyone to get them from the land office?

“A. Mr. Kettenbach asked me to go up and get the papers for Mr. Dwyer.”

Did you do anything of that kind?

A. No, sir. [3090—2760]

Q. He also states that you wanted 18 sets. Did anything of that kind occur?      A. No, sir.

Q. Also: “Q. Do you know who was present when he told you that?

“A. Mr. Dwyer and Mr. Kettenbach. He called me into the directors’ room.”

Did anything of that kind occur?      A. No, sir.

(Testimony of William F. Kettenbach.)

Q. On page 1689 Robnett testifies to a conversation he says he heard between you and Mr. Colby in the bank:

“Q. Were you at any time at a conference or conversation in which either of these parties and the defendants conversed relative to any timber transactions?” That was the question asked Mr. Robnett. He says, “I was.”

“Q. Now, when was that?

“A. Why, along in the latter part of the spring or early summer of 1903.

“Q. Now, state what you can relative to that conversation, where it was and who were the parties to it?

“A. The first conversation that took place between Mr. Colby and Mr. Kester.

“Q. Where was this?

“A. This was in the main body of the bank, the main body of the working-room of the bank, at Mr. Kester's desk.”

Did you hear or have any knowledge of the conversation between Mr. Colby and Mr. Kester, relative to these Colby and Emory entrymen?

A. Why, I have recited the Colby deal the way it came up, and anything different from that, of course, outside of my presence, I don't know anything about. I don't know anything about any conversation he may have had with Mr. Kester, but I know the transaction, from the time [3091—2761] it was taken up by me until it was finished, was just as I stated yesterday.



(Testimony of William F. Kettenbach.)

Q. He also testified to a conversation wherein he stated that Mr. Colby told you and Mr. Kester that if you would furnish the money and pay the expenses to the entrymen and give the entrymen \$200.00 for their right, that you could take over the claims under the same conditions that they were to take them from the entrymen. Did anything of that kind occur, Mr. Kettenbach?

A. No, sir, nothing of that kind occurred.

Q. Did you have any knowledge of any such arrangement or agreement between Colby and Emory and the entrymen? A. Not at all.

Q. On page 1695 Mr. Robnett testifies that he heard a conversation between you and Mr. Dwyer relative to a hundred dollar bill which he says was kept in the bank and used for the purpose of paying location fees. I will ask you, Mr. Kettenbach, if there was ever a hundred dollar bill kept in the bank for that purpose, and used for that purpose?

A. No, sir.

Q. Mr. Robnett testifies, in response to the following question:

“Q. Now, do you know of any conversation ever had in the bank relative to that hundred dollar bill?

“A. Yes, there was a conversation in the bank took place between Mr. Dwyer, and I believe between Mr. Kettenbach, either Mr. Kettenbach or Mr. Kester, in regards to the hundred dollar bill, asking him about how he got his location fee paid. He says, ‘Well, they paid, a certain number, and it is back in the bank tonight.’ ”

(Testimony of William F. Kettenbach.)

Did any such conversation as that occur?

A. Not with me.

Q. Did you ever see a hundred dollar bill in the Teller's cash drawer, in an envelope used for any purpose? [3092—2762]

A. Only for a regular purpose. I have seen a great many hundred dollar bills in the Teller's cash drawer, and if it was a mutilated hundred dollar bill it would be in the envelope which contained other mutilated currency, which was frequently sent away to California to be redeemed after it got to a certain amount. But the only large bill that was kept in the Teller's drawer would be either a five hundred or a thousand dollar denomination. The hundred dollar bills that we used had a regular drawer of their own in the currency drawer, and there were none kept in that envelope, unless, as I say, it was mutilated and it was kept with the rest of the mutilated currency, or mutilated currency that was to be sent away at stated intervals, when it reached a certain amount.

Q. Did you hear Mr. Bradbury testify to a hundred dollar bill that was kept in the Teller's cash drawer and used for clearance purposes, and kept in an envelope for the sake of convenience and for his own protection?

A. I heard Mr. Bradbury testify in Boise, I think, to that effect. I didn't hear Mr. Bradbury testify here.

Q. Do you remember any such occurrence as that?

A. I remember, as I say, often there would be five

(Testimony of William F. Kettenbach.)

hundred and not very often thousand dollar bills, because thousand dollar bills were scarce. It was a thousand dollar bill that was used a good deal between the First National Bank and us in clearing; it was handy, and we used it in clearing back and forth, and it was kept in an envelope.

Q. On page 1697 Mr. Robnett testifies concerning the reason he dropped out of the Mary J. Harris contest, and that it was because Mr. Kester told him that he thought he had better drop out, on account that it was going to bring up a certain amount of notoriety, and Mr. O'Fallon was there, and it would create an investigation of the timber matters and it would bring them into it, and he thought it was best to drop out, and he did so, and also that he had a talk with Mr. Kettenbach—yourself—and told him what I was going to do, and he said he thought it [3093—2763] would be a good thing, too. He wanted to know if I had spoken to Mr. Kester about it, and I told him yes, that George had advised me to, too, and he said, “All right, go ahead and drop out and keep out of any trouble.” Did you have any such conversation as that with Mr. Robnett?

A. No, sir.

Q. Mr. Robnett also testified concerning the Carrie D. Maris claim, that he had told you about the agreement he had with Carrie D. Maris; that it was to furnish the money to pay all of her expenses, and she was to deed the claim over to him and they were to divide the profits or something to that effect.

A. He never spoke to me about the Carrie D.

(Testimony of William F. Kettenbach.)

Maris claim that I recall at any time he was in the bank. Mr. Kester attended to the purchase of the Maris claim. I never knew or heard about it.

Q. Did he tell you about any arrangement he had with any of the other entrymen from whom you purchased lands? A. He did not.

Q. He also testified that he told you about the arrangement that he had with Johnny Little to purchase his claim, before he made final proof. Did anything of that kind occur? A. No, sir.

Q. He also testified that he told you concerning a prior agreement he had with Benjamin F. Bashor, referred to on page 1704 of his evidence. Did he tell you anything about any arrangement he had with Mr. Bashor? A. He did not.

Q. He also testified that he told you concerning a prior agreement he had with the Longs for the purchase of their land. Did he make any statement to you concerning that? A. Not at all.

Q. He testified that at the time he approached you to make the loan on the timber claims of the Longs, that he told you that he had a prior agreement with them, and referred to on page 1708 of the record, [3094—2764] of the evidence of Robnett. Did he make any such statement as that to you?

A. No, sir; he did not.

Q. He also testified on page 1710 of the record that he told you of the arrangement that he had with Robinson and Ferris for the purchase of their land, prior to the time that they made final proof. Did he tell you anything about that? A. No, sir.

(Testimony of William F. Kettenbach.)

Q. Those statements that he makes in regard to that are false?     A. Yes, sir; absolutely.

Q. He testified on page 1713 that he told you and Mr. Kester concerning the arrangement he had with Van V. Robertson for the purchase of his claim, prior to the time he made final proof. Did he make any such statement as that to you?     A. No, sir.

Q. He also testified that he told you regarding his arrangements with George Morrison and Hyde concerning their claims, the purchase of their claims, prior to the time they made final proof. Did anything of that kind occur?     A. No, sir.

Q. He also testifies that he told you concerning the arrangement that he had with Edward M. Hyde, and with Mr. Clute, for the purchase of their claims, prior to the time they made final proof, referred to on page 1715 of the record, the evidence of Clarence W. Robnett. Did he make any such statement to you?     A. No, sir.

On page 1720 of the record Mr. Robnett testifies that he told you concerning a prior agreement that he had with Drury M. Gammon for the sale of his land, prior to the time he made final proof. Did he tell you anything about that?     A. No, sir.

Q. He also testified that he told you concerning the arrangement [3095—2765] he had with William B. Benton for the sale of his land, prior to the time he made final proof. Did he tell you anything about that?     A. No, sir.

Q. He also testified that he told you concerning the arrangement he had with Joel H. Benton for the



(Testimony of William F. Kettenbach.)

purchase of his land, prior to the time he made final proof.

A. No, sir; he never told me anything about it.

Q. He also testified, on page 1725 of the record that he had a conversation with you concerning some checks that was issued by Joel H. Benton, and that at that time he told you of the arrangement he had with Joel H. Benton for the purchase of his claim. Did anything of that kind occur?      A. No, sir.

Q. On page 1726 of the record he testified that he had a conversation with you concerning the arrangement he had with Gerry Van Artsdalen, relative to the purchase of his land, prior to the time he made final proof, and that you knew all about that.

A. Robnett?

Q. Yes. Did anything of that kind occur?

A. No, sir. I don't think he purchased Gerry Van Artsdalen's land.

Q. On page 1728 and 1729 Mr. Robnett testifies that he told you about the arrangement he had with Soren Hansen for the purchase of his land, prior to the time he made final proof. Did he tell you anything about that?      A. No, sir; he never did.

Q. Did you know anything about any arrangement that he made with him for the purchase of that land, prior to the time he made final proof?

A. I never knew anything about that claim until it was put up to me for the sale of it.

Q. Did you have any knowledge of any arrangements he had with [3096—2766] Robert O. Waldman for the purchase of his land, prior to the time

(Testimony of William F. Kettenbach.)

he made final proof?      A. No, sir.

Q. Mr. Robnett testifies on page 1734 and 1735 that he assigned some mortgages to you which he took in his own name, and which was paid in location fees—for location fees and for final proof, for various entrymen, and he testifies in response to the following question:

“Q. Do you know whether the land was ever transferred from Mr. Harrington?” That is referring to the Harrington claim as well as others.

“A. Yes, sir, it was transferred to Will Kettenbach.

“Q. When was that note taken,—at the time of final proof?      A. Taken at the time of final proof.

“Q. You didn’t assign the mortgage, did you?

“A. No, sir.

“Q. Who negotiated this transfer to Will Kettenbach?      A. I did.

“Q. Did Mr. Kettenbach know of your arrangement with Mr. Harrington?      A. He did.

“Q. Did he know at the time that he advanced the money for final proof?      A. He did.

“Q. How did he know that?

“A. By previous conversations and matters that I told him.

“Q. Previous conversations with you?

“A. Yes, sir.”

Did you have any previous conversation with him in which he told you of any arrangement he had with Harrington, or any of the other entrymen?

A. No, sir. There never was a word said about

(Testimony of William F. Kettenbach.)

those claims until he came to me to loan the money on them, and the reason that Mr. Robnett [3097—2767] took those mortgages and assigned them without recourse was at my suggestion, because I didn't consider that I wanted to hold or would hold Robnett as security on the notes, as I considered that the security was in the claims themselves, and I had him assign each note without recourse, so that he would not feel that he was liable in any way on it, and in this state the assignment of a note carries the assignment of the mortgage, so it was unnecessary to get an assignment of the mortgage, in view of the fact that he was right there in the bank, anyway, and in case one of the mortgages were paid why he could sign a release all right; so I didn't take steps to have him make an assignment of the mortgage; I simply had him assign the note without recourse, because I didn't consider that I was holding him as any security; that the security I had was in the claims.

Q. Now, on page 1737 Robnett testifies that in his first conversation with you relative to going into the timber business that you had an understanding that he wouldn't make any location or locate people in townships cruised by you, or in which you was locating anybody; that he was to keep out of your territory, or words to that effect. What have you got to say about that?

A. I never had such a conversation, and I never was locating in any territory that Mr. Robnett was locating. That was his business. I never had any-

(Testimony of William F. Kettenbach.)

thing to do with locating in any territory.

Q. He also testifies that when he was locating any people on claims he always talked it over with you and Mr. Kester, so that he wouldn't conflict with you.

A. He never did, in any instance.

Q. Mr. Robnett testifies that he was working in 39-3 east and 39-2 east, and that you was working in some other townships. Do you know anything about that?

A. Well, I don't know exactly where Mr. Robnett was working, but I think it was 39-3 east, and probably 39-2 east; but I wasn't working in any other section. I know that 39-3 east and 39-2 east were plats [3098—2768] that were in townships that were open for filing long prior to any of these townships in which the land in controversy now was in.

Q. Then was there any occasion for you making any arrangement about that?

A. None at all, because 39-3 east and 39-2 east were open probably three years prior to 38-5 and 38-6 east, or 39-4 and 5.

Q. Mr. Robnett testifies that he was to go right ahead in those townships; that you didn't care to enter that field just at that time, as it was second growth timber, and they wanted to use their entry-men in other territory, but later on if he wanted to handle any of those entries they had the preference right. Was there any such conversation as that, or any such understanding as that, or agreement?

A. No, sir, none at all.

Q. Mr. Kettenbach, you are one of the defendants

(Testimony of William F. Kettenbach.)

mentioned in indictment 615, are you?

A. Why, I can't keep track of them by number. I haven't a very good memory. There were a great number of them.

Q. You are one of the defendants that was tried in Moscow? A. Yes, sir. In 1907?

Q. In 1907? A. Yes, sir.

Q. And who was acquitted there on some counts and convicted on others, and who appealed to the Circuit Court of Appeals, and the transcript being designated as case No. 1605?

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

WITNESS.—Yes, sir.

Mr. TANNAHILL.—Q. You are also one of the defendants who was indicted and tried in the consolidated cases of 615, 605, 607, 635 and 637, at Boise, was you not? A. Yes, sir. [3099—2769]

Q. In the month of February and March, 1910?

A. Yes, sir.

Q. And you are one of the defendants who was acquitted there?

Mr. GORDON.—The same objection.

WITNESS.—Yes, sir.

Mr. TANNAHILL.—Q. And the land involved in those indictments was a portion of the same land that is involved in the bills here?

Mr. GORDON.—The same objection—incompetent, irrelevant and immaterial.

WITNESS.—Yes, sir.

Mr. GORDON.—It is stipulated that List 6, State



(Testimony of William F. Kettenbach.)

University Selections, List No. 9, State Normal School Selections, and List No. 6, Charitable Institutions Selections, and List No. 6, Scientific School Selections, were filed in the United States Land Office at Lewiston, Idaho, on the date they bear, respectively.

Mr. TANNAHILL.—Subject to the defendants' objection to each of the documents as being incompetent, irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Complainant's Exhibits 114, 115, 116 and 117.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Kettenbach, how long had you known Mr. M. L. Goldsmith before he was made State Land Selector?

A. Well, if you will give me the date that he was made the State Land Selector I can tell you very close.

Q. Well, I don't know about the date that he was appointed, but the date that they testified that they went into the timber was some time about the middle of March, 1904, and so I assume he had been appointed about that date, or just prior to that.

A. I had known him about ten years prior to that.

Q. And had you ever done any banking business with him? [3100—2770]

A. Why, he had banked there at our bank.

Q. Do you know whether or not he got a loan from the Lewiston National Bank, of which you were

(Testimony of William F. Kettenbach.)

President, December 30th, 1903?

A. I couldn't tell. He did business there, and I suppose was accommodated many times. I couldn't tell without the records.

Q. And do you know whether he made a loan, or the bank loaned him \$3,000.00, February 23d, 1904?

A. I couldn't say, without the Bills Receivable Register.

Q. Or whether the bank made him a loan June 29th, 1904, for \$7,000.00?

A. It is possible, but I wouldn't swear to it.

Q. You have no independent recollection—

A. No, sir.

Q. — of conducting that negotiation yourself?

A. No, sir. Mr. Goldsmith was a man that was very active in business; he was buying and selling and borrowing money and paying it back; he was quite an active customer of the bank, I know, but I couldn't swear to those items.

Q. Now, you spoke of some transaction relative to an endeavor you had made to purchase some State lands, in which Mr. Dwyer was to have a one-fourth interest; is that correct?

A. I didn't say as to what interest he was to have. He was to have an interest.

Q. Well, how much was he to have?

A. Well, I think, if my recollection serves me right, that he was to have a one-fourth interest of the net profits, or something like that.

Q. Well, who was to have the other three-fourths?

A. Well, that was Mr. Kester and I.

(Testimony of William F. Kettenbach.)

Q. And I will ask you if somebody else wasn't in on that, to get another fourth?

A. I think that there was some—not as far as we were concerned [3101—2771] (Mr. Kester and I)—but I believe there was supposed to have been some understanding between Dwyer and some other party about what he was to do with his.

Q. Who was the other party?

A. I believe it was Fitzgerald.

Q. S. P. Fitzgerald?

A. Yes, S. P. Fitzgerald; but Mr. Kester and I had nothing to do with that at all. We had no transaction with Mr. Fitzgerald. That is only hearsay as to whether Mr. Dwyer had ever made any arrangement about his part or not.

Q. You got that from Mr. Dwyer, though?

A. No, I don't say that I did. I don't think that I did. I heard most of it from Mr. Fitzgerald.

Q. Now, I will ask you whether you testified as to the relationship between you and William B. Benton? A. He is a cousin of mine.

Q. And he is a son of Joel H. Benton?

A. Yes, sir.

Q. And Joel H. Benton is a brother of your mother, is he? A. Yes, sir.

Q. And Miss Elizabeth Kettenbach, mentioned in the bill, is your aunt? A. My aunt.

Q. Your father's sister?

A. My father's sister; yes, sir.

Q. And Mrs. Elizabeth White is your mother in law? A. Yes, sir.

(Testimony of William F. Kettenbach.)

Q. Mr. William J. White is your brother in law?

A. My brother in law, yes, sir.

Q. And Mrs. Mamie P. White is William J. White's wife?     A. Yes, sir.

Q. And Albert G. Kester is a brother of George H. Kester? [3102—2772]     A. Yes, sir.

Q. Edna P. Kester is George H. Kester's wife?

A. Yes, sir.

Q. And Mrs. Mabel Atkinson is George H. Kester's sister?     A. Yes, sir.

Q. And what is Mrs. Atkinson's husband's name?

A. J. F., I think it is.

Q. Dr. Atkinson?     A. Yes, sir, Dr. Atkinson.

Q. Now, in the line-up of April 24th, 1904, your mother in law, and brother in law, and sister in law, Mamie P. White, were in the line that day at the land office, were they not?

A. Yes, sir, I believe they were.

Q. Now, do you know whether or not your wife went down there with any of them, or was about the land office that day with any of them?

A. I have talked it over with her since reading Robnett's testimony, and she says that she wasn't. I know that she never took up a claim, and never even went to go to take up a claim. Of course, I don't know of my own personal knowledge.

Q. You don't know of your own personal knowledge but what she might have gone out shopping and dropped in with them?

A. Well, she says not; she says she wasn't around the land office. Of course, I don't know that, but

(Testimony of William F. Kettenbach.)

then I have asked her, and I believe her. I will say this much, she wanted to take up a timber claim, and I never would let her, because I thought it was too much of a hardship.

Q. Frank W. Kettenbach, mentioned in one of the bills, is your uncle, is he not?     A. Yes, sir.

Q. Is he your father's brother?

A. My father's youngest brother. [3103—2773]

Q. Now, you remained in the bank from the time you stated that you originally went into the employ of the bank until you discontinued your services or connection officially, about the 8th or 9th of July, 1907; is that correct?

A. It was the 8th, I think—it may have been the 9th—it was the 8th or 9th of July.

Q. You and Mr. Kester both retired at the same time?

A. We resigned, and our resignation was accepted by the Board of Directors—and Mr. Robnett also resigned at the same time.

Q. Well, didn't he remain in that bank for—

A. I believe his resignation did not take effect until the first of August.

Q. He went back into the bank, though, in October, didn't he?

A. Some time in October of the same year.

Q. Of the same year, and remained there until March, 1909?     A. That is my understanding.

Q. And he retained his position as bookkeeper when he went back in October, 1907, didn't he?

A. Yes. Of course I wasn't in any way connected



(Testimony of William F. Kettenbach.)

with the bank, but I saw him in there and doing that work, and I presume that he was bookkeeper—in his old position.

Q. Now, Mr. Colby, I understood you to say, came into the bank at about the time that the final proofs were to be made on the entries that have been referred to as the Emory-Colby entries?

A. Yes, sir.

Q. There were six of them, were there?

A. I believe that there was—that we made arrangements for six loans—loans for six claims, at that time.

Q. Now, do you know how much you loaned him?

A. Well, it is pretty hard to remember, but my recollection the best it will serve me is, in drawing his check for the money for the men that were to prove up on the day that he let them have the money, [3104—2774] my recollection is that he drew a \$1,700.00 check.

Q. Now, they didn't all prove up the same day? There were four of them proved up one day, and two of them some time later?      A. Later.

Q. And do you know whether he made the arrangements for the four of them, or all of them, at the same time?

A. I think he made the arrangements to borrow the money at the same time, but he didn't take out any money for the other two; he simply took the money for the four entrymen.

Q. And that was about \$1,700.00?

A. I think he drew a check for an even \$1,700.00.

(Testimony of William F. Kettenbach.)

Of course, it is hard to remember those things.

Q. I just want it approximately, as well as you can remember, Mr. Kettenbach.

A. Yes. I think it was \$1,700.00 that he drew a check for.

Q. And that was to be secured by note and mortgage? A. Note and mortgage.

Q. And do you remember the first conversation you had with Mr. Colby about lending him that money?

A. Why, it was—as I before stated, he came into my office—

Q. He came into your office, in the bank?

A. In the bank. It was either the day or the day before these men were to make proof, and he put it up to me in a business-like way, a business proposition; he said he had been to other parties to borrow money upon these claims on their land that they were about to prove up, and he had fallen down or been unable to make it, and he told me what the claims would cruise; that is what I was principally interested in, and what the bank was interested in; and he told me that Fred Emory knew all about them, and as I had known Fred Emory for a long while and had confidence in his judgment I told him to have Fred come in and see me about it, so I could get Fred's idea; and that was done, and I was satisfied with the values, and when he came again I told him I [3105—2775] would make the loan.

Q. Was it your understanding at that time that

(Testimony of William F. Kettenbach.)

people had to use their own money when they made proof?

A. That they had to use their own money?

Q. Yes.

A. Well, I never gave it much attention. I knew that people borrowed money right along on timber claims.

Q. Did you know it was a requirement of the land office, or a regulation of the land office, that they would have to use their own money?

A. Well, I knew a question was asked whether it was their own money, and how long they had had it; but I took the view of it, if they made arrangements to borrow money, that that was their money. That is the view I took of it, and they naturally could do with the borrowed money what they pleased.

Q. And did Mr. Colby mention Mr. Emory's name at that time, and tell you that he had located these people?

A. I believe he did. At any rate he told me Mr. Emory was acquainted with the claims; that he knew them, and could give me the full information.

Q. Now then, Mr. Kettenbach, do you remember that Mr. Colby was there once or twice that day that he got the money, relative to the loan, and did you say that you would take it up later?

A. I think he came in twice. I think after the first time he came in he sent Mr. Emory in, and I talked with Mr. Emory about it.

Q. Was that about lending the money?

A. No; that was with Mr. Emory; I wanted to

(Testimony of William F. Kettenbach.)

know the value of the claims.

Q. I mean did you tell Mr. Colby that you would have to talk with Mr. Kester about lending the money?     A. No, sir.

Q. I understood Mr. Colby made that statement.  
[3106—2776]

A. No. As far as the loans were concerned, Mr. Gordon, I was attending to the loans; but when the proposition came up to purchase them, why then I talked the matter over with Mr. Kester.

Q. And when Mr. Colby came in, did he and Mr. Emory come together?     A. No, sir.

Q. I mean when you were talking with Mr. Emory about the purchase?

A. No; I recollect that Mr. Emory came in by himself. Mr. Colby had sent him in because I had asked to have him come in.

Q. And you told Mr. Emory that you had loaned the money on these claims?

A. No; I told him I was figuring on lending it, and I wanted to know what the value of the claims was.

Q. That is Mr. Emory?

A. That is Mr. Emory, and I wanted to know the value before I approved the loans, and if he could give me a valuation of the timber on them, roughly, I would take that as a basis to make the loan on.

Q. And did Mr. Colby come back that day and draw his check later, or did you have any communication with him?

A. If it was the day before, he came back that day,

(Testimony of William F. Kettenbach.)

and he drew his check the next day; but if it was the day they proved up it all happened the same day. I can't clearly remember; I think, though, it was the day before that all the arrangements were made, and it was the day of the proof that he drew his check. That is my remembrance of it.

Q. Of course, you were interested in knowing how much timber was on those claims, and the value of these claims, before you loaned the money?

A. Certainly; yes, sir.

Q. And you wanted Mr. Emory's advice to that effect, as he had cruised them, as you understood?

A. Yes. [3107—2777]

Q. And you sent for him and he came in and you talked that over? A. Yes, sir.

Q. Now, did Emory come back the day that you purchased the land and closed out the deals?

A. Did Emory come back?

Q. Yes.

A. I have no recollection of anything further with Mr. Emory in the matter at all. I think Mr. Colby was the man that came back, and I made the arrangements with him, as I have stated before.

Q. Now, who purchased or closed the transaction relative to the purchase of the Smith and Newman entries?

A. Well, I can't individually pick them out, Mr. Gordon.

Q. Well, I think they were the two that were purchased, or that made their proof a week later—I don't remember when the purchases were made.



(Testimony of William F. Kettenbach.)

A. I can't remember it. Mr. Colby attended to the matter before and whether he attended to the other two that came later, and who the other two were, I don't remember. The transaction came up to me on the day before these men proved up.

Q. That is the first four?

A. Yes. I never heard of any of them, or knew who they were, or that Emory had located them, or anything, until it came up to me that day. The transaction worked itself out all right from the inception of it right there, and when I told Mr. Colby to handle it I was getting rid of details, that was all, and I can't recall which two of those entrymen came in later, whether it was Mr. Smith or Mr. Dent or Mr. Clute, I don't know which the latter two were. I have never looked it up.

Q. And Mr. Colby was to attend to the taking of the mortgage, etc.?

A. Yes, sir. He was a good clerical man—had a good head on him. [3108—2778]

Q. Now, you said the first connection you had with Mr. Dwyer relative to any timber transactions at all was when you employed him to go into the Potlatch and the St. Maries country? A. Yes, sir.

Q. And to cruise and to make estimates of a certain amount of timber there? A. Yes, sir.

Q. Now, do you remember what claims they were that he cruised at that time?

A. Well, it was a long while ago, but as I remember there was a claim called the Adrian Sweet claim—I remember that name—and there was two claims,

(Testimony of William F. Kettenbach.)

I think, by the name of Hupp, over on the breaks of the St. Maries, one of those creeks that lead in there; he cruised out some vacant land, and we scripped that. It kind of joined in with all these other lands, they were close.

Q. And were they the Cornell and Shaeffer claims?

A. They were in the same territory.

Q. The same lot?

A. In the same territory, yes, sir. Some were on one side of the divide and some were on the other; some were on the Potlatch divide, and some were on the other divide; they sloped over into the breaks of the St. Maries known as the Potlatch territory up there.

Q. Now, when did you employ him to make those cruises, about what year?

A. I can't remember whether it was—it was when we first—prior to our acquiring some of them, because it didn't take him very long for him to look them up; and if I knew when we first acquired our first claims up there I could say, but I don't remember whether it was 1889 or 1890, or what year it was.

Q. Or 1901 some time?

A. It might have been along there.

Q. And those claims were taken in the name of you and Mr. Kester, were they not? [3109—2779]

A. Yes, sir.

Q. And you sold those claims to the Potlatch Lumber Company?

A. The Potlatch Lumber Company.

Q. And I understand, you said that you then had

(Testimony of William F. Kettenbach.)

an agreement with the Potlatch Lumber Company that you would do no more timber business in that locality?

A. No, you can't call it an agreement; it was a sort of a tacit understanding that we were not to go back in there and go to buying any more timber. Of course, there was nothing binding, or anything legal, or anything like that, but what you would say the word of one man to another. They didn't want to keep buying us out all the time, I suppose. And that was one of the conditions that we readily acceded to.

Q. And then Colby came in after those people had made proof and talked with you about selling those four claims, did he not?      A. Yes, sir.

Q. And you told him that you would see Kester about it?      A. Yes, sir.

Q. And you did see Kester the same day?

A. Yes, sir.

Q. And then Mr. Colby came back, is that right; or did he wait in the bank?

A. I don't think he waited in the bank; I think he waited outside, but I can't remember whether Kester was in or not. Anyway, I saw Kester, and Mr. Colby came in again, and I told him we would take the claims.

Q. And all these transactions took place in the Lewiston National Bank?      A. Yes, sir.

Q. You say there were nine or eleven claims that you talked with Robnett about and loaned the money for them to make proof, and I think you named them?

A. There were nine or eleven; I don't remember.

(Testimony of William F. Kettenbach.)

Q. And you purchased all of those nine or eleven?

A. I believe in every instance, I think that I purchased the claims.

Q. Did you purchase all the timber claims upon which you had a mortgage?

A. Not all of them—not all the claims on which I had mortgages, no; I loaned in other instances.

Q. How is that?

A. In other instances, I say, where I had money loaned I never purchased the claims.

Q. Your own personal money?

A. Well, my money, or money that I was handling—my relatives' money.

Q. Do you remember any of those claims that you loaned money on?

A. Well, there was the Pearl Washburn claim that I spoke of yesterday; I can recall that. And there were some claims up in the St. Maries.

Q. Do you remember the names of any of those?

A. No, I can't, Mr. Gordon; there were four or five of them.

Q. Were the mortgages recorded?

A. Yes, sir; and they were bought by some timber company up there, and a man by the name of Hart, I think, from Coeur d'Alene City, paid me the mortgages. Oh, I made several loans—I can't recall them just now—because I was in the business of loaning money—in which I didn't subsequently purchase the timber claims.

Q. You are a brother of Mrs. Grace Pfafflin, are you not?      A. Yes, sir.

(Testimony of William F. Kettenbach.)

Q. And for a number of years you have attended to her estate, have you not?

A. I have; but not recently I haven't.

Q. From when until when did you transact her business?

A. Well, I think that after I left the bank and had a lot more to [3111—2781] do on my own account, attending to my own affairs, I think that her matters were handled through Mr. Frank Kettenbach and the Idaho Trust Company, and her attorney in Indianapolis, acting in conjunction.

Q. Well, that was down to the middle of 1907?

A. Oh, yes; I handled it up until that time.

Q. From what time did you handle it?

A. Oh, ever since—

Q. Oh, approximately, Mr. Kettenbach—I don't care for it exactly.

A. Well, from the time my mother died; I think it was in 1895.

Q. And of what did her estate consist—how much?

A. My sister's?

Q. Yes.

A. Why, when I took a hold of it I think it was about \$40,000.00, and at the time I turned it over it was about \$125,000.00.

Q. And you were entrusted with the whole estate, were you?      A. Yes, sir.

Q. Now, you had some conversation with Bertsell H. Ferris about his timber and stone claim, did you not?      A. At what period?

Q. Any period.



(Testimony of William F. Kettenbach.)

A. Oh, I talked to Mr. Ferris after I was the owner of the mortgage and note on his claim about paying it, and I think I walked up the street one day and talked to him about it. I wanted him to try and raise me the money and pay me off, or try to sell the claim.

Q. And he finally agreed to make a deed to the place to cancel the mortgage?

A. No; he sold me the claim, and I paid him something. Of course, the interest and taxes had run up, and the carrying charges, up to where it was virtually full value for the claim; but, as my memory serves me now, I paid him something over and above what that amounted to.

Q. You understood that the note you purchased for those claims, together with the Bertsell H. Ferris claim, carried a commission with it, [3112—2782] did it? A. Oh, yes.

Q. The commission was included in that note?

A. Yes.

Q. Well, do you know why the commission was required?

A. That is something that Mr. Robnett and Mr. Thatcher had arranged, I presume. It had been put up to me by Robnett that some arrangement would be carried out.

Q. Well, do you remember at the trial of William F. Kettenbach, George H. Kester and William Dwyer, at Moscow, in the spring of 1907, referred to as No. 1605, wherein this question was asked you, when you testified on your own behalf and on behalf of the other defendants at that trial:

(Testimony of William F. Kettenbach.)

“Q. Did you understand why that commission was required, or why it was inserted in the note?

“A. I certainly understood why it should be required. It was required because you were taking a bigger chance with your money than the entryman was; you were putting up all the money, and paying for the land, virtually.”

A. Yes, sir, I testified to that. I was asked for an explanation and I gave it. But this requirement had already been enacted with the entryman by Robnett, or whoever—I think it was Thatcher that was originally going to take those mortgages.

Q. Now, do you remember a conversation you had with Sam Hutchings relative to taking up a timber claim?

A. Yes, sir, I talked with Sam Hutchings once about a piece of timber land.

Q. When was that, Mr. Kettenbach?

A. I can't recall the date, but I can recall the conversation. The date would be somewhere close to the time that Township 38-2 was being—I think 38-2 was being thrown open, and the State making its filings. I think I met Hutchings one day, and told him there was a good [3113—2783] chance for him to take a timber claim if he wanted one; that I understood there was some pretty good land in a certain district in 38-2, and that if he would go ahead and get to the land and look it over and come back and file, then if the State in using its rights failed to take the piece that he could get a pretty good timber claim, I thought. I gave him that advice as one friend to

(Testimony of William F. Kettenbach.)  
another. I had known Sam all my life.

Q. That was in 1901 or 1902?

A. It was somewhere there, just prior to 38-2 being thrown open. I don't think he availed himself of it, though. That was all there was to the conversation.

Q. You suggested to him that he go up and take up a claim?

A. Yes; I told him that there was a good chance for him; if the State didn't use its right he might get a good claim.

Q. Mr. Kester, I understood you to say, had the active management for the purchase of timber lands owned by yourself and George H. Kester; is that right?

A. Why, in the majority—in almost every instance, I think, Mr. Gordon. There might have been some few instances where I conducted the closing of a deal, but I can't recall it. I know at that time I was more active in the bank, in looking after the banking business, and Mr. Kester looked after our personal interests a good deal.

Q. You can't think of one claim that was bought in the name of Kester and Kettenbach that Mr. Kester didn't make the negotiations, can you?

A. Well, I can't recall it to mind, unless it might have been those two claims that we bought from the Robnett entrymen, Morrison and Hyde; I might have closed that, or we might have closed it together; we might both have been there together, I can't recall; and there might have been others, but I don't recall

(Testimony of William F. Kettenbach.)

them. We bought a good many from time [3114—2784] to time, and it has slipped my mind whether I closed any others in the name of Kester and Kettenbach or not.

Q. Now, do you remember any of these entrymen that either you or you and Kester together purchased their timber claims, that you were final proof witness for?

A. Why, I remember being a witness for Mr. Cornell.

Q. How did you meet Mr. Cornell?

A. I expect that—I knew who Cornell was through Kester. I don't know whether I was ever formally introduced to him, or met him in any other way except just knowing who he was, and then speaking to him, probably. I was a witness for him. I believe he worked for us up in our yard at one time. I may have spoken to him up there.

Q. What was he doing in the yard—just cutting grass?

A. Something like that; and he worked for Frank Kettenbach, next door. He was working around at one time here.

Q. Now, do you remember Mr. Cornell coming into the bank the day he made proof, and asking you to come up and be his witness, or that you were a witness and it was your time to testify?

A. I don't remember, but he may have done so. It is very likely that he did—sent down and called me up as a witness, but I don't remember.

Q. The bank was in the same building that the land

(Testimony of William F. Kettenbach.)

office was at this time?     A. Right underneath.

Q. Do you remember the question that was asked you on cross-examination when you were a witness, relative to what the financial condition was of Mr. Cornell, so far as you know, and that you answered "Not very well acquainted. I understood that his father had money." Do you remember that?

A. If that is in the proof that that was my answer that I gave, yes; that would be about the answer I would give. I wasn't very well acquainted. [3115—2785]

Q. Well, who told you that his father had money?

A. Mr. Kester. I got all the information that I had regarding Mr. Cornell through talking with Mr. Kester. It seems that they had been schoolmates, and that Kester knew something of his people.

Q. How many times did Mr. Cornell come to the bank there to see you that you know of?

A. To see me?

Q. Yes.

A. Well, if he came after me as a witness that is the only time I ever know of his coming to see me.

Q. How many times did you see him about the bank?     A. I don't recall.

Q. Half a dozen?     A. No, I don't think so.

Q. I show you the testimony of William F. Kettenbach given at final proof of the entry of Ivan R. Cornell, September 10th, 1903, and ask you if that is your signature?     A. Yes, sir.

Q. Now, who else were you a witness for, that you afterwards bought their claim?



(Testimony of William F. Kettenbach.)

A. Why, I don't recollect. I remember Cornell, because the matter came up at the trial.

Q. Fred Schaeffer?

A. I may have been. I have been over that territory.

Mr. GORDON.—I offer in evidence the paper that Mr. Kettenbach has just identified, and ask that it be given the same exhibit number that it had when it was offered before.

Mr. TANNAHILL.—Objected to as immaterial.

Mr. GORDON.—Q. I show you the testimony of William F. Kettenbach given on cross-examination at the final proof of Fred W. Schaeffer, and ask you if you signed that paper? [3116—2786]

A. That is my signature, yes, sir.

Q. And do you remember this question being asked you: "What is his financial condition, so far as you know?"—Referring to Schaeffer, and you answered: "Good." A. Yes, sir, I answered that.

Mr. GORDON.—I offer that paper in evidence, and ask that it also be given the same number that it had when offered before.

Mr. TANNAHILL.—Objected to on the ground that it is irrelevant and immaterial.

Mr. GORDON.—Q. You say that you loaned some of your relatives' money on timber claims?

A. Yes, sir; in a good many instances.

Q. And when you did that you loaned it in your own name? Their names didn't appear in the transaction?

A. No. They were too much scattered; it would

(Testimony of William F. Kettenbach.)

have been too much trouble to have gotten releases, and such as that. I conducted it in my own name and simply charged it up to them and gave them the loans and carried it for them.

Q. Now, you said that you allowed the nine or eleven entrymen upon which you had made the loans an amount over and above the mortgage. Do you remember how much it was in each instance that you allowed them above the mortgage?

A. No, I don't. I know that the price was always fixed between the entryman and myself when the purchase was made, when the negotiation was made for the purchase, which would be an even amount; and the mortgage, the note and the interest, and the taxes that I had paid in any instance where I had paid the taxes, would all be charged up against that, and the difference (and there always was a difference), why they got.

Q. Would it average \$25.00 a claim? [3117—2787]

A. More than that.

Q. How much more?

A. It would average—I should say it would average nearer \$70.00.

Q. Between \$25.00 and \$75.00?

A. Well, it might have been as low as \$25.00 in some instances, and up as high as \$75.00. It is hard to recall now; but it was somewhere in that range.

Q. Now, in these loans you made these nine entrymen there was a commission, I understand. Did your relatives get that commission?

A. Yes, sir.

Q. Do you remember testifying to this at the trial

(Testimony of William F. Kettenbach.)

of Kester, Kettenbach and Dwyer, at Boise, in February, 1910: I read from page 782 of the record:

“Q. Will you state to the jury how you first became interested in the purchase of timber, and in what manner?

“A. The very first piece of timber that I bought, I suppose that was the start of my business. It was in either 1900 or 1899, somewhere along there. There was a young fellow took up some timber over on the St. Maries, in what is known as the headwaters of the St. Maries River, and he held it for a while, and I loaned him the money to prove up on it, and he gave me a note and mortgage; and that run along, and it seemed like there wasn't no apparent stir in timber at that time, and he wanted to go away, and he came down to the bank and asked me if I wouldn't buy the claim.” Do you remember that?

A. Yes, sir.

Q. That adventure was rather profitable, was it not?

A. I believe it was. Awhile after I purchased it the Potlatch Lumber Company, the North Land Pine Company, and the Wisconsin Log & Lumber Company commenced buying timber in that country, and they were [3118—2788] bidding against one another, and prices went up awful fast.

Q. Further reading from page 783: “And I believe the next timber I acquired, I believe Mr. Kester joined with me in acquiring, after that, and it was through the knowledge of Mr. Dwyer—I learned to know Mr. Dwyer; he wasn't doing business in my

(Testimony of William F. Kettenbach.)

bank." Do you remember that? A. Yes, sir.

Q. When you spoke to Mr. Hutchings, you had learned from Mr. Dwyer that there was some good timber up there in the locality where you wanted him to take a claim, did you not?

A. I heard there was a little good timber, in one part of the township; I forget now which part it was.

Q. There were about six claims up there that Dwyer told you about?

A. He gave me some information, I suppose, along about that much. Dwyer just gave me that information, that was all there was to it, only I imparted it to Mr. Hutchings.

Q. Well, do you remember testifying to this at Boise, relative to your conversation with Hutchings about taking up a timber claim: "Before I suggested to Mr. Hutchings that he ought to take up a timber claim, and I can give almost the exact language—because I remember it very well—in township 38, 2 east. That was before the State made its selection. I had learned, I believe through Mr. Dwyer, that there was about a section and a half of fairly good timber land up there, but the rest of that northern part of the township wasn't much good. I said to him: 'Sam, have you ever taken up a timber claim?' and he said, 'No.' And I says, 'There is about a section and a half of land in 38-2 east that I understand is very good. There is about six claims there.' I says, 'If I was you I would go up there and come back and file on a stone and timber claim up in the land office there, ahead of the State's

(Testimony of William F. Kettenbach.)

rights.' '' Do you remember testifying to that?

A. Yes, sir; I testified that way.

Q. What was scrip worth at that time, Mr. Kettenbach—about [3119—2789] \$3.50 or \$4.00, in April?

A. I think as low as \$3.20 at one period, or up to \$4.00 or \$4.50; it fluctuated on the market.

Q. It went up to \$4.00, and as high as \$5.00 and \$6.00, didn't it? A. Yes, afterwards.

Q. I mean along in 1904 and 1905?

A. I presume probably in 1905 it did; but before that I don't know whether it had gotten up that high or not. There was a gradual tendency to go up, I know that.

Q. Do you remember whether or not Mr. Kester introduced you to Cornell in the bank?

A. I don't ever remember of any introduction to him. I just learned to know the fellow, casually. He might have introduced me.

Q. Whenever Mr. Kester saw fit to purchase any timber for you and him jointly, that was satisfactory to you, was it not? A. Yes, sir.

Q. And he even bought without consulting you?

A. Not a great deal, but in some instances he did. His judgment I considered was as good as mine, and anything he was willing to put his money into I was willing to put mine in.

Q. I understood you promised Mr. Deary, of the Potlatch, when you sold him that property, that you would not operate in that territory any more?

A. That was the tacit understanding; it wasn't



(Testimony of William F. Kettenbach.)

an out-and-out promise. We never did go back in there, though.

Q. And you bought on Mr. Dwyer's estimates, did you?     A. Yes, sir.

Redirect Examination.

(By Mr. TANNAHILL.)

Q. Mr. Kettenbach, I show you a list of timber and stone filings made in the Lewiston land office April 25th, 1904, which was identified [3120—2790] by the witness Joseph M. Molloy when he was on the stand; and I will ask you to state how many of those claims you and Mr. Kester purchased.

A. Not over eight I don't think, from my memory. I can't recall over eight of them.

Mr. TANNAHILL.—We offer in evidence this list that has been identified by the witness Molloy, and ask that it be marked as the defendants' proper exhibit.

Said list was thereupon marked by the Reporter as Defendants' Exhibit K-1.

Mr. TANNAHILL.—Q. Mr. Kettenbach, did you state to Mr. Hutchings at any time that you would give him \$100.00 or \$200.00, or any other sum, for his right, and pay all expenses for his taking up the claim, if he would deed it to you?

A. No, sir; my suggestion was merely for him to take a claim. Nothing was said about what he was to do with it, or that I was to have any interest in it, which I wasn't. I simply suggested to him that there was a chance for him to get a good claim, providing the State didn't come along and take it.

(Testimony of William F. Kettenbach.)

Q. Did you hear the evidence of Williams and Flood, or have you read it over?

A. No. I heard it in Boise.

Q. Well, the evidence here was substantially the same as it was at Boise; that they thought you took the acknowledgment to their acknowledgment, before you as a notary public, and that you was present, and that you told them they could get their right back, or something of that kind.

A. Nothing like that ever occurred.

Q. Was you ever a notary public? A. No, sir.

Q. Have you ever been qualified to take acknowledgments? [3121—2791] A. No, sir.

Q. I will ask you, Mr. Kettenbach, if you purchased all of the claims that was offered to you for purchase at the prices you was paying for them, during the times you was making the purchases?

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

WITNESS.—No, sir; I turned down claims every day or two—offers made, you may say.

Mr. TANNAHILL.—Q. Mr. Robnett ever interested with you in the acquiring of timber lands in any way? A. No, sir.

Q. Has he ever had any interest in your lands, or you any interest in the lands that he located people upon, other than through the mortgages you have testified to?

A. No, sir. I purchased the one claim from Robnett.

Q. Did you and Mr. Kester ever have any under-

(Testimony of William F. Kettenbach.)

standing or arrangement or agreement with William Dwyer to have an interest in any of the lands that you purchased, other than this school land that you have testified to?     A. No, sir.

Q. Did you have any understanding or agreement whereby you should have any interest in the land purchased by Kittie E. Dwyer or William Dwyer?

A. No, sir.

Q. Have you any interest in any of the land standing in her name?     A. No, sir.

Mr. TANNAHILL.—I want to offer in evidence these indictments. The defendants severally offer in evidence indictment No. 617, The United States of America vs. William B. Benton, Clarence W. Robnett and William F. Kettenbach, returned by the grand jury in the Northern Division of the United States District Court, Northern Division of the District of [3122—2792] Idaho, filed November 6th, 1905, and ask that it be marked the defendants' proper exhibit.

Mr. GORDON.—I object to it on the ground that it is incompetent, irrelevant and immaterial.

Said indictment was thereupon marked by the Reporter as Defendants' Exhibit L-1.

Mr. TANNAHILL.—I also offer in evidence indictment No. 618, returned by the grand jury in the United States District Court for the Northern Division of the District of Idaho, filed November 6th, 1905, entitled United States of America vs. Fred Emory, C. W. Colby, George H. Kester and William F. Kettenbach, and ask that it be marked the de-

(Testimony of William F. Kettenbach.)

defendants' proper exhibit.

Mr. GORDON.—Objected to on the ground that it is incompetent, irrelevant and immaterial.

Said indictment was thereupon marked by the Reporter as Defendants' Exhibit M-1.

Mr. TANNAHILL.—I also offer in evidence the remittitur or decision of the United States Circuit Court of Appeals, in indictment No. 615, in case No. 1605 in the United States Circuit Court of Appeals calendar, rendered May 17th, 1907, returned and filed September 22d, 1909, by A. L. Richardson, Clerk of the United States District Court, and entitled Mandate under Rule 32, and ask that it be marked the proper exhibit.

Mr. GORDON.—Objected to, on the ground that it is incompetent, irrelevant and immaterial.

Said remittitur was thereupon marked by the Reporter as Defendants' Exhibit N-1.

Mr. TANNAHILL.—The defendants also severally offer in evidence the verdict of the jury returned in the United States District Court for the Northern Division of the District of Idaho, in the case of the United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer, indictment No. 615, and the United States vs. Jackson [3123—2793] O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, indictment No. 605, and the case of the United States vs. William Dwyer, George H. Kester and William F. Kettenbach, indictment No. 607, which verdict is as follows: We, the jury in the above-entitled con-



(Testimony of William F. Kettenbach.)

solidated causes find the defendants, William F. Kettenbach, George H. Kester and William Dwyer, not guilty as charged in the several indictments, in the above-entitled causes, exclusive of counts 1, 2 and 5 in cause numbered 615.

Mr. GORDON.—Objected to on the ground that it is incompetent, irrelevant and immaterial.

Said verdict was thereupon marked by the Reporter as Defendants' Exhibit O-1.

Mr. TANNAHILL.—And the defendants offer in evidence the verdict of the jury entitled: In the United States District Court, Northern Division, State of Idaho. The United States of America, Plaintiff, vs. William F. Kettenbach, George H. Kester and William Dwyer, indictment No. 615, returned at Moscow, in Latah County, State of Idaho, and filed June 16th, 1907, and ask that it be marked the defendants' proper exhibit.

Mr. GORDON.—Objected to on the ground that it is incompetent, irrelevant and immaterial.

Said verdict was thereupon marked by the Reporter as Defendants' Exhibit P-1.

Mr. TANNAHILL.—Inasmuch as the documents offered are the original records and files of the United States District Court for the District of Idaho, and the defendants have furnished copies of the records and files in this cause, it is stipulated and agreed by and between the parties hereto that the copies produced and furnished by the defendants are true copies of the originals, and that the originals may be withdrawn from the files and the copies



(Testimony of William F. Kettenbach.)

offered and presented substituted therefor with the same force, and to have the same force and effect as the original [3124—2794] documents.

Mr. GORDON.—Subject to the objection that the papers and documents are incompetent, irrelevant and immaterial.

Mr. BABB.—Q. You mentioned having sold some claims to the Potlatch Lumber Company. Do you remember what entrymen made the entries on those claims?

A. No, I can't recall all of them, Mr. Babb. I think they were the Lambdin, Shaeffer and Cornell claims.

Q. Yes; those are the ones I was more particularly interested in, the Lambdin, Cornell and Shaeffer claims. Do you remember selling them to the Potlatch Lumber Company? A. Yes, sir.

Q. I will ask you if you remember what the purchase price received for those claims was from that company, if any?

A. Do you mean for the whole group of land that we sold, or individually for each claim?

Q. There was some other land included, was there? A. Yes, sir.

Q. In the conveyances?

A. The whole deal amounted to \$17,500.00, if my memory serves me.

Q. And what other tracts of land were included with those three that you mentioned, if you remember?

A. There was some scripped land that we had,

(Testimony of William F. Kettenbach.)

and some other claims that we had purchased. To make it so that you can figure it better, we got \$12.50 an acre, I think it was, straight through. \$12.50 an acre, I think, is the price the land sold at, and I think it brought \$17,500.00.

Q. I show you a voucher here, wherein you receipted the Potlatch Lumber Company for \$15,500.00, and ask you to look at that. [3125—2795]

A. Yes, sir, that is my signature.

Q. Did that pertain to this transaction?

A. Yes; a part of it—I think there was \$2,000.00 that was held up for a while.

Q. And then I show you a draft on the Potlatch State Bank, to the order of Kester and Kettenbach, for \$2,200.00, and ask you if that pertained to the transaction?

A. Well, that does, yes. I was thinking it was just \$2,000.00, the balance, but it is apparently \$2,200.00 balance. That would make \$17,700.00, instead of \$17,500.00.

Q. Did Kester and Kettenbach receive those amounts mentioned in those papers—\$15,500.00 and \$2,200.00? A. Yes, sir.

Q. From the Potlatch Lumber Company?

A. Yes, sir.

Mr. BABB.—I will ask the stenographer to mark these two documents for identification.

The Reporter thereupon marked said documents as Defendants' Exhibits Q-1 for Identification, and R-1 for Identification, respectively.

(Testimony of William F. Kettenbach.)

Mr. GORDON.—Let me ask you one question, will you?

Q. Do you know how many claims you sold the Potlatch, for which this check that you have identified was payment?

A. It wasn't in regular claims—some was in scrip in odd amounts.

Q. Do you know how much scrip you sold?

A. No. If you will figure \$12.50 an acre and \$17,700.00 you will get the amount of the land.

Q. Well, there were only three claims?

A. No; there was other claims. There was the Hupp claims and the claims I mentioned before; but there were only these three in controversy: Lambdin, Shaeffer and Cornell. [3126—2796]

Q. Now, you say you loaned some money on the Washburn claim, and that that was a claim that you didn't buy. Didn't you buy that claim one time?

A. No, sir.

Q. Didn't you buy that claim for Mr. McGrane, and put it in the name of Mr. Chapman?

A. Mr. McGrane bought the claim, and I negotiated for the sale of the land that McGrane had to the Clearwater Timber Company, I think. I had something to do with it. I had nothing to do with the Washburn claim, though.

Q. Well, didn't the Washburn claim go to John E. Chapman, and from him to McGrane?

A. I couldn't say, without seeing the deeds.

Q. Well, did you negotiate the sale of it from McGrane?

(Testimony of William F. Kettenbach.)

A. From McGrane to the Clearwater Timber Company, yes, sir. I was a sort of a vendor, you might say.

Q. And you had never had anything to do with it before that transaction?

A. No; only I loaned the money on the claim.

Q. Well, you know it was in the name of John E. Chapman, was it not? A. I presume it was.

Q. And John E. Chapman at that time was the Paying Teller of the Lewiston National Bank?

A. Yes, sir.

Mr. TANNAHILL.—Q. Mr. Kettenbach, did you have any conversation with or make any statement to any of the officers of the Clearwater Timber Company or the Potlatch Lumber Company, as to how you acquired the Lambdin, Cornell and Shaeffer claims? [3127—2797]

A. No, sir. They were purchased on abstracts and our warranty deed, I presume.

Q. I will ask you, Mr. Kettenbach, what disposition you and Mr. Kester have made of these other lands—of the lands that you have together?

A. Oh, we have—there has been a good many of them transferred to the Idaho Trust Company.

Q. Those that are described in the deed introduced by the complainant, from Kester and Kettenbach to the Idaho Trust Company, were transferred to the Idaho Trust Company? A. Yes, sir.

Q. And what were they transferred to the Idaho Trust Company for? Were they absolute conveyances, or were they taken as security?

(Testimony of William F. Kettenbach.)

A. They were security for any money that either one of us owed or might owe.

Q. Do you owe the Idaho Trust Company any money?     A. Yes, sir.

Q. How much do you owe it?

A. I think I owe them about—well, about \$12,500.00, or between that and \$15,000.00.

Q. Is it secured by this property?

A. Why, yes, it is, because the agreement under which we transferred, under which they hold them there, is that they shall be security for any indebtedness of ours then or in the future.

Q. Did you make any statement or have any conversation with any of the officers of the Idaho Trust Company, as to how you acquired these lands?

A. No, sir.

Q. And what information had they that you know of when they purchased?     [3128—2798]

A. Why, simply the records.

Q. They were purchased on abstracts, were they?

A. Yes.

Q. Who furnished the abstracts?

A. It was the county records.

At this time a recess was taken until two o'clock P. M.     [3129—2799]

At two o'clock P. M., the hearing was resumed.



**[Testimony of William B. Benton, for Defendants.]**

WILLIAM B. BENTON, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. What is your name?

A. William B. Benton.

Q. Where do you live, Mr. Benton?

A. I live about four miles south of Wesley, in Idaho County.

Q. How long have you lived in the State of Idaho?

A. Off and on for about 25 years.

Q. What relation are you to Joel H. Benton?

A. A son.

Q. Did you ever take up a timber claim?

A. Yes, sir.

Q. Do you remember about when you took up that timber claim?

A. I believe it was in the fall of 1902.

Q. Are you acquainted with Clarence W. Robnett?

A. Yes, sir.

Q. State what connection Robnett had with your claim, if anything, or what arrangement you had with him, if any, for the getting of the money or any part of it, to make your final proof?

A. When I took up my timber claim I was cruising timber and locating people on the Clearwater benches, and when I located on it he was to furnish me what money I lacked at that time, and I was to pay him [3130—2800] back, and I gave him a

(Testimony of William B. Benton.)

note, and I was to pay him back when the claim was sold.

Q. Now, how much did you give him your note for?

A. I think the note was originally made for something like \$250.00 or \$260.00.

Q. And was that note renewed after that?

A. Yes, sir.

Q. And how many times was it renewed?

A. Well, it was renewed, I guess, in different ways, for different amounts, five or six times.

Q. Did you afterwards sell your claim?

A. Yes, sir.

Q. To whom did you sell it?

A. Clarence W. Robnett.

Q. And what did you get for it?

A. I got in the neighborhood of \$1,675.00 or \$1,690.00, somewhere in that neighborhood.

Q. \$1,670.00 or \$1,690.00?      A. Yes.

Q. And did you have any negotiations with Robnett for the sale of your land before you made final proof?      A. I did not.

Q. Mr. Robnett testified that he had an arrangement with you whereby you was to file on this claim and prove up on it, and he was to furnish you the money for all of your expenses, and you was to deed the land over to him, or he was to sell it for you and you were to divide the profits that were made out of it, over and above your expenses. Was there any such arrangement as that?

Mr. GORDON.—We object to that as leading.

(Testimony of William B. Benton.)

WITNESS.—There never was. [3131—2801]

Mr. TANNAHILL.—Q. Did you ever have any dealings with Mr. Robnett to that effect?

A. No, sir.

Q. Did you have any understanding or agreement, either directly or indirectly, with anyone, for the sale of your land, prior to the time you made your final proof? A. I did not.

Q. How long after you made your final proof was it before you sold your land?

A. Somewhere between six and eight months; that is, to the best of my recollection.

Cross-examination.

(By Mr. GORDON.)

Q. You are a cousin of William F. Kettenbach, are you? A. Yes, sir.

Q. Were you at one time in the timber business with Mr. Robnett? A. Yes, sir.

Q. And you were at the time you took up this claims? A. Yes, sir.

Q. Did Robnett pay you any cash for your claim?

A. Any cash? Yes, sir.

Q. When you settled, the settlement was made in cash? A. Yes, sir.

Mr. GORDON.—That's all.

Mr. TANNAHILL.—That's all. [3132—2802]

Mr. TANNAHILL.—I have some affidavits here, the affidavit of David S. Bingham, marked Defendants' Exhibit "H," for Identification. I now offer this affidavit in evidence.

(Testimony of William B. Benton.)

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—I also have the affidavit of Edgar H. Dammarell, marked Defendants' Exhibit "I," for Identification. I now offer that affidavit in evidence.

Mr. GORDON.—The same objection.

Mr. TANNAHILL.—I also have the affidavit of Charles W. Taylor, marked Defendants' Exhibit "E," for Identification, and I now offer that affidavit in evidence.

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—I also have the affidavit of Edgar J. Taylor, and a short affidavit of C. W. Taylor attached, marked Defendants' Exhibit "G," for Identification. I now offer that affidavit in evidence.

Mr. GORDON.—Objected to on the ground that it is incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—I also have the affidavit of Jackson O'Keefe, marked Defendants' Exhibit "F," for Identification. I offer that affidavit in evidence.

Mr. GORDON.—Objected to on the ground that it is incompetent, irrelevant and immaterial.

Mr. TANNAHILL.—Now, that is all of my evidence, with the exception possibly of some of these stipulations before we close, or something that I have possibly overlooked. [3133—2303]

**[Testimony of William Deary, for Defendants.]**

WILLIAM DEARY, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. BABB.)

Q. State your name, age, residence, and occupation.

A. William Deary, 57; Potlatch, Idaho; general manager of the Potlatch Lumber Company.

Q. About when was the Potlatch Lumber Company organized?     A. In 1903.

Q. And you have been general manager from that time down?     A. Yes.

Q. What, if anything, did you, as general manager, have to do with the matter of the purchase of timber lands.     A. Well, I passed on the prices.

Q. I will ask you to state if you remember some purchases that were made from William F. Kettenbach and from George H. Kester.

A. I do remember of some purchases that we made from them.

Q. One of them, I believe, coming from William F. Kettenbach individually. What did you have to do with those purchases?

A. Well, I just agreed on the price that we would pay for them.

Q. With whom did you have your negotiations, chiefly?     A. With Mr. Kettenbach.

Q. I show you a deed from Kester and wife to the Potlatch Lumber Company, and from Kettenbach



(Testimony of William Deary.)

and wife and Kester and wife to the Potlatch Lumber Company, and another from Kettenbach and wife and Kester and wife to the Potlatch Lumber Company, and another from William F. Kettenbach and wife to the Potlatch Lumber Company, and I will ask you if those deeds contain the transfers of the purchases you have referred to?

A. This one here is for \$7,000.00. We had one deal of about \$15,000.00. I think there was only two deals at two different times. This deed here pertains to another \$2,200.00, and this \$6,000.00 and \$2,000.00 and \$7,000.00 pertains to the first deal.  
[3134—2804]

Mr. BABB.—I will ask you to mark these deeds for identification.

Said deeds were thereupon marked by the Reporter for identification as Defendants' Exhibits S-1, T-1, U-1, and V-1, for identification.

Mr. BABB.—Q. I will show you now, Mr. Deary, a couple of documents, one a draft of the Potlatch State Bank on the Spokane & Eastern Trust Company, to the order of Kettenbach & Kester, for \$2,200.00, and the other a receipted voucher, whereby W. F. Kettenbach for Kester and Kettenbach receipts to the Potlatch Lumber Company for \$15,500.00; and ask you to state whether those two documents pertain to the purchases evidenced by these deeds which I have just shown you.

A. This is \$2,200.00; we have just had that; and this is for the \$7,000.00 and \$6,000.00 and \$2,500.00, that is \$15,500.00. It pertains to those three or four

(Testimony of William Deary.)

transactions, and this pertains to the straight \$2,200.00.

Q. Were these two documents executed at the time those transactions were closed respectively, and used for closing them?

A. Yes, I think so. That about closed them up when we gave them that.

Q. Did the consideration evidenced by these two documents pass—the \$17,700.00—from the Potlatch Lumber Company to Kettenbach and Kester?

A. Yes, sir.

Mr. BABB.—We now offer in evidence these deeds which I showed the witness, and also the draft and the receipted voucher which I showed Mr. Kettenbach and this witness.

Q. I will ask you to state, Mr. Deary, if at the time you closed up these purchases you had these titles examined by an attorney.

A. Well, I couldn't say as we had them examined. Our custom has been that if there is a short transfer we have generally the man that pays out the money just gets some of us to pass on the short titles, but if the abstract shows that there is any complications, why [3135—2805] we probably have our attorney—have it passed on by our attorney; but our custom is to generally let it run along about three months or six months, and then have them all cleaned up and passed on.

Q. I will ask you if you have refreshed your recollection this morning with reference to these particular purchases—if you refreshed your recollec-

(Testimony of William Deary.)

tion? A. If I recollect the particular what?

Q. Did you refresh your recollection any this morning, as to the matter of an opinion upon these particular titles that I am asking you about?

A. No, not particularly.

Q. I showed you an opinion of title, did I not, this morning, on one of these, signed by Mr. Pickett—Mr. Charles G. Pickett? That was on one of the first purchases, a purchase made in 1903.

A. Mr. Pickett went over a whole lot of our titles at that time.

Q. That was two years after you had closed the purchase? A. Yes.

Q. Those purchases were made in 1903?

A. Yes, sir.

Q. Do you remember of having had those titles examined—those titles you purchased there in 1903—prior to the examination by Mr. Pickett?

A. Not only by ourselves.

Q. Now, take the other title, the Cornell title here, I will ask you to state whether you have been able to find that you have ever had that title examined by any attorney?

A. No, we never had that title examined by any attorney. Now, that is one of the titles that I have reference to that we call a very simple, short title, and the way that came was that at some time I told Mr. Hulmeston to go through all of our deeds and look them over and see if there was anything that wanted to be passed on, and if there was anything complicated, so as to file them away. So that is how

(Testimony of William Deary.)

he just [3136—2806] put that O. K. on there.

Q. Mr. Hulmeston, who O. K'd the Cornell title, wasn't with your company at the time that purchase was made from Kester and Kettenbach?

A. Oh, no; he has only been with us a couple of years—I think a couple of years.

Q. And you hadn't had that title examined prior to the time you had him check it up?

A. No; we never had any examination on that title by any attorney.

Q. And his examination was made long after you had closed the purchase?     A. Yes.

Q. I will ask you to state, Mr. Deary, whether at the time the Potlatch Lumber Company made the first purchases that were made from these parties, the purchases in 1903, if you had any notice or information at any time to the effect that the Government claimed that those titles had been illegally acquired from the Government in the first instance?

A. No, we didn't.

Q. I will ask you to state also whether at the time you made the subsequent purchase, in 1906, if you had any notice or information that the Government made any claim that the title to that piece of land—the Cornell entry—had been acquired from the Government by any illegal means.

A. No, sir, I didn't.

Q. Where did the President of the Potlatch Lumber Company reside?

A. He resides at Little Falls, Minnesota.

Q. Has he resided there ever since the organiza-

(Testimony of William Deary.)

tion of the company?

A. Yes, and before the organization of the company.

Q. And the secretary of the company?

A. He resides—his name is Bell—Edward S. Bell—he resides in Winona, Minnesota. [3137—2807]

Q. Has he resided there ever since the company was organized?

A. Yes, sir; he has been there a long time, too.

Q. How often are they out here in Idaho—the President and Secretary of that company?

A. Well, the President, it is going on two years since he has been out here, if I recollect about it, and Mr. Bell was out here I think once in two years. They are here generally once a year.

Q. Have they had any knowledge of anything in regard to the titles of property that you purchased out here from time to time?

A. Have they had any knowledge of it?

Q. Yes. What, if anything, did they have to do with the purchases?

A. They didn't have anything to do with it. They didn't have any knowledge of what I purchased only about once a year when we sent our annual statement in; only they knew I was purchasing, and made drafts for money; that is about all the knowledge that I know they had of it.

Q. That annual statement did not contain any information in regard to the titles, or anything of that kind? A. No—just so much land.

Q. None of the details of the negotiations for or



(Testimony of William Deary.)

the closing up of any of these purchases ever came before them?     A. No.

Q. Who, if anyone, at any time since you have been the General Manager of the company, has had the charge of the matter of purchases, other than yourself?

A. Well, I have always had the charge of purchasing, as far as setting the price, and so on. I may not have traded with the individuals, but there was a list addressed to me, and then I set down what we would pay for it, and maybe someone else would come through and close it up; that is, someone of the force in the office, I should say.

Q. Well, when you refer to the closing up, you mean the mere [3138—2808] matter of putting the papers in form?

A. Yes, and turning over the money.

Q. The details?

A. Yes, and seeing that the deeds came in and were recorded.

Q. They didn't come in contact with the vendor, necessarily, in their work?     A. No.

Q. And were charged with no responsibility in the matter of the titles?     A. Eh?

Q. They were charged with no responsibility in the matter of the purchase, after you had passed on it?     A. No, not as to the price of it.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Deary, when did you say that the Pot-

(Testimony of William Deary.)

latch Lumber Company started operations in Idaho?

A. In 1903, I think about—I think they were organized some time in April, 1903.

Q. Had they acquired any timber lands in Idaho at that time?

A. No, not before they were organized.

Q. And these transactions that you have referred to were of the first that you had in the timber land business in Idaho, were they not?

A. What do you mean by of the first—the first trade?

Q. Among the first?

A. Oh, yes, among the first; they were among the first six months.

Q. Now, when you came here were you the General Manager of the company in Idaho?

A. I was elected the General Manager of the company when it was organized.

Q. And you are still General Manager? [3139—2809]

A. Yes, sir.

Q. And you have bought all the timber that has been bought by that company in Idaho, have you?

A. Yes, sir.

Q. And conducted the purchases of the property yourself? A. I set the price on the property.

Q. Well, what do you mean by setting the price? Did you have to refer it to the east?

A. No, I didn't refer it to no one, but it was referred to me. It was referred to me very often. I was pretty busy, and had a good many things to attend to, and when there would be five or six claims

(Testimony of William Deary.)

that they were negotiating for, or that they were going to negotiate for there was a list of the estimates made on them, and I stated the price we would pay for the properties.

Q. Now, who referred the claims to you that are set out in the deeds that you have identified?

A. I think I went over them estimates myself in the office and set the prices on them, too, with Mr. Kettenbach.

Q. And who made the estimates of this property?

A. I couldn't tell you now.

Q. You don't know on whose estimates you purchased?

A. Well, I couldn't say what particular man. We have about five or six men working for us.

Q. It was one of your men who estimated it?

A. One of our cruisers, yes, sir.

Q. And who is the President of the Potlatch Lumber Company at the present time?

A. C. A. Weierhauser, of Little Falls, Minnesota.

Q. And has he been the President of it ever since the company was organized? A. Yes, sir.

Q. How long have you resided in Idaho? [3140—2810]

A. I have resided in Idaho I think five years, if I remember right.

Q. Five years? A. Yes, sir.

Q. And did you work for any person or company in Idaho, or have you worked for any person or company in Idaho other than the Potlatch Lumber Company? A. Since when?

(Testimony of William Deary.)

Q. Since you came here?

A. Since the company was organized?

Q. Yes.

A. No, I never worked for anyone only the Potlatch since it has been organized.

Q. Well, who did you work for before the Potlatch Lumber Company was organized?

A. For the North Land Pine Company.

Q. The North Land Pine Company?

A. Yes, sir.

Q. And what was your position with that company?     A. General manager.

Q. Where did they have their office?

A. We had our main office—we had an office in Moscow; that was our local office; and we had an office for a while in Duluth, Minnesota.

Q. And did you have any knowledge of Idaho timber or the values of it before you came to Idaho?

A. No.

Q. And did you become familiar with the values of Idaho timber while you were employed by the North Land Pine Company?     A. I don't know.

Q. You say you don't know?

A. Yes. [3141—2811]

Q. Was Mr. Brown an agent of the Potlatch Lumber Company at one time since it has been incorporated?

A. He accepted service in cases of foreign corporations.

Q. What Brown is that?

A. They call him Nat Brown, I don't know his

(Testimony of William Deary.)

initials—N. E., or something.

Q. He is the gentleman that is now connected with the Clearwater Timber Company?

A. Yes. He was appointed agent for foreign companies, to accept services.

Q. Now, who is the attorney for the Potlatch Lumber Company in Idaho? A. Now?

Q. Yes.

A. Well, I don't know as they have any particular attorney. Mr. Pickett does some work for us in Idaho, and Mr. John Gray does some work for us in Idaho, and Mr. Richards, I think, and Haga, of Boise, does some business for us.

Q. Have you an attorney at Lewiston?

A. No, sir.

Q. Isn't Mr. Babb—

A. Oh, well, I guess we have—Mr. Babb, maybe. I am not as familiar with those things as I might be, because we haven't had very much. Mr. Babb, I guess, is our attorney, too, here.

Q. How long has Mr. Babb been attending to business about this section of the country for the Potlatch?

A. I think a couple of years, maybe three; I don't remember when he first became connected with us.

Q. And by whom were these claims that you purchased that you have referred to, offered to you for purchase?

A. I think that part of them was offered by Mr. Kettenbach—Mr. William Kettenbach—and some of them by Mr. Kester. One of them, [3142—2812]



(Testimony of William Deary.)

I think the last one, was by Mr. Kester, I am pretty sure.

Q. And did you have any arrangement with either Mr. Kester or Mr. Kettenbach when you purchased this land from them, to the effect that they would not operate in your territory any more?

A. Not that I remember.

Q. Nothing was ever said about it?

A. No agreement that I ever remember of having with them.

Q. Was there any talk about it at all?

A. I don't remember.

Q. You never asked them not to operate in the country or the locality where these claims were that you purchased?

A. No, sir, I never asked them not to operate.

Q. And they never told you that they never would operate there?      A. I don't remember.

Q. Did you have a local office at Moscow in 1905 and 1906?

A. I don't think we did. I don't remember.

Q. Did you ever have a local office at Moscow?

A. Yes.

Q. When was it?      A. In 1903 and 1904.

Q. And you discontinued it in 1904, did you?

A. We moved our office when we became interested over in Palouse; we moved it over to Palouse, Washington; and from there to Potlatch, Idaho.

Q. Were you in any way well acquainted with either Mr. Kester or Mr. Kettenbach?

A. I knowed them.

(Testimony of William Deary.)

Q. And in 1903 did you know them?

A. Yes; I think I met them probably prior to 1903.

Q. Didn't you know that the grand jury was investigating the conduct of Mr. William F. Kettenbach and Mr. George H. Kester in 1905 and 1906?  
[3143—2813] A. I don't remember; no.

Q. And didn't you know that they were indicted in the fall of 1905? A. I didn't know.

Q. You never heard anything about it?

A. I don't remember.

Q. Didn't you read the newspapers of this state?

A. Sometimes I did, not particularly.

Q. And didn't you ever read that two men with whom you had been dealing in the timber business had been indicted for conspiracy to defraud the United States of its timber lands?

A. No, I don't remember of reading it.

Q. Did you hear of it?

A. I don't remember of anything appearing in 1905, or 1904, or 1906.

Q. And that three of the claims that you purchased are mentioned in those indictments—you never heard of that?

A. I never knew they were in them indictments, and I don't know to-day as they are in those indictments,—Mr. Babb? I don't know it now, Mr. Gordon, that they are.

Q. What was the occasion of this attorney that you had putting his O. K. on that abstract?

A. Because I told him to go through all of our titles and look them all over—Mr. Hulmeston—and

(Testimony of William Deary.)

if there is anything there that isn't all right, why will you take them and give them to our attorney and see that there is nothing in there that isn't all right; we want to file them away..

Q. And did Mr. Kester and Mr. Kettenbach turn over to you the deeds that had been delivered to them at the time they made the deeds to you?

A. I don't know. I don't remember. I don't think that they turned any of the deeds to me, particularly. They came to the office. [3144—2814]

Q. You say the deeds came to the office?

A. They came to us some way, because we paid for them, but I don't remember ever looking at one of the deeds.

Q. Did you know of the fact of the trial of Mr. Kester and Mr. Kettenbach at Moscow?

A. When?

Q. In the spring of 1907?

Mr. BABB.—I object to that, because it is after these deals were closed.

Mr. GORDON.—Q. I ask you if you heard of that?

A. In 1907? I don't remember as I know of it in 1907. I don't think that I remember of knowing it at that time—not over a year ago, I don't think I remember of the Kester and Kettenbach trouble.

Q. You never heard that they had been in any timber trouble? A. I don't remember.

Q. Until a year ago?

A. I may have heard a good many things five years ago that I have forgot since that time. My memory

(Testimony of William Deary.)

is not very good, and I am pretty busy in doing my own business, and I don't read the papers very much, because I am pretty busy, and my wife reads the papers to me at night, because my eyes are sore, and if I heard it I don't remember.

Q. Did I understand you to say that you came to Idaho in 1903?

A. No, sir; you understood me to say that I came with the Potlatch Lumber Company in 1903.

Q. Now, how long did you reside in Idaho before that?

A. I never resided in Idaho until I think it is four or five years ago, till we built the mill at Potlatch. I had an office in Moscow, and I used to live in Spokane.

Q. And did you live at Spokane prior to coming to Idaho?

A. No, sir; I lived in Wisconsin. [3145—2815]

Q. What part of Wisconsin?

A. West Superior.

Q. And you had never lived in Washington or Idaho until five years ago?

A. Yes, sir; I lived in Washington. I came to Washington, to Spokane, I think it is nine years ago, and I lived there for four years.

Q. You lived at Spokane? A. Yes, sir.

Q. Then you came to Washington about 1900 or 1901?

A. I think I came to Washington in 1901.

Q. And you lived at Spokane during all the time you lived in Washington?

(Testimony of William Deary.)

A. Four years; then I lived at Potlatch since; and I lived six months at Palouse.

Q. And Potlatch is how far from Spokane?

A. Potlatch is about 74 miles—no, about 84 miles.

Q. And how far is that from Moscow?

A. It is about 25 miles, or 23, somewhere around there.

Q. And your office was at Moscow until 1904 some time, I understood you to say?

A. Sometime about then we moved to Palouse.

Q. Then you moved to—

A. —moved the office to Palouse.

Q. How far is that from Moscow?

A. About 29 miles, by the railroad.

Q. About 29?

A. By the N. P. I think it is 29 miles.

Q. And when you moved there, have you lived there ever since?      A. Where, at Palouse?

Q. Yes.

A. No; I only lived at Palouse a little over six months.

Q. And then you went back to Washington?  
[3146—2816]

A. I came from Palouse to Potlatch, when we built the mill up there.

Q. And you say it is about 20 miles from Moscow?

A. Yes, sir.

Q. And do you live there now?      A. Yes, sir.

Q. And you have lived there ever since you moved from Palouse?      A. Yes, sir, when I am at home.



(Testimony of William Deary.)

Redirect Examination.

(By Mr. BABB.)

Q. In these particular sales evidenced by these deeds which I showed you here, you dealt with either Kester or Kettenbach personally, did you?

A. Yes, sir.

Q. And not through somebody else? A. No.

Q. Did any timber estimator or anybody else ever make any intimation to you at any time that there was any illegality in the matter of the acquisition of these titles from the Government? A. No, sir.

Q. Prior to the time you paid the consideration?

A. No, sir.

At this time a recess was taken until to-morrow morning at ten o'clock. [3147—2817]

On Thursday, the 20th day of October, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of William F. Kettenbach, for  
Defendants (Recalled).]**

WILLIAM F. KETTENBACH, a witness heretofore called and duly sworn, being recalled in behalf of the defendants, testified as follows, to wit:

Direct Examination.

(By Mr. TANNAHILL.)

Q. Mr. Kettenbach, when you was on the stand the other day you testified to purchasing some timber claims from Clarence Robnett; and having the conveyance made to a Mrs. White, and selling the claims to the Clearwater Timber Company. I wish you would explain how you came to have the conveyance made to Mrs. White.

(Testimony of William F. Kettenbach.)

A. Well, there were four claims that Robnett was in possession of at the time he went out of the bank, or shortly thereafter, and he was going to go away. He told me that he was unable to dispose of them, and that he wanted to get money to pay his obligations there at the bank, and really asked me to assist him in disposing of them; and so I looked on the matter from all sides and considered that he owed Mrs. White some money, and he owed the bank some money, and he was going away, and no disposition could be made of the claims at that time; and so I thought it would be best to have him deed them to Mrs. White, and in case after his departure I could make a disposition of them to any of the timber companies, or anybody else, why they would be there where the transfers could properly be made, without having to send to him and call upon him again; and that suited him all right. The claims were deeded to Mrs. White, and I afterwards made a sale to the Clearwater Timber Company of [3148—2818] two of them, and she held the other two. But in the meantime Robnett had liquidated his obligation to Mrs. White in another manner, and she was holding these other two claims, and he still owed some obligations to the bank—I was out of the bank and had nothing to do with it, but through some deal between he and Frank Kettenbach, Mrs. White deeded the claims back to the Lewiston National Bank, at Robnett's request, and with the understanding of both Robnett and Mr. Frank Kettenbach; and that disposed of the matter.

(Testimony of William F. Kettenbach.)

Q. Now, did you settle with Robnett on the basis of the price that you received from the Clearwater Timber Company?

A. Yes, sir, for the two claims. Mr. Robnett received that money.

Cross-examination.

(By Mr. GORDON.)

Q. This is the same Mrs. White who is your mother-in-law, isn't it?      A. Yes, sir.

Q. And she also holds the William J. White and Mamie P. White claims?      A. Yes. [3149—2819]

Mr. TANNAHILL.—It is stipulated and agreed that the record of rejected applications at the United States Land Office at Lewiston, Idaho, for the year 1904 and other years, at page 94, shows the following entries:

John J. Skuse, attorney for Hiram M. Hamilton, northeast quarter of southwest quarter of section 20; east half of northwest quarter of section 27, township 38 north, range 5 east. Filed April 15th, 1904, Spokane, Washington, meaning the address of the applicant. Rejected, as 60 days' preference right of the State of Idaho has not expired.

John J. Skuse, attorney for John F. Campbell, northwest quarter of section 13, township 38 north, range 5 east. Filed April 15th, 1904, Spokane, Washington, the address. Rejected, as 60 days' preference right of the State of Idaho had not expired.

John J. Skuse, attorney for Jacob Post, east half of southwest quarter of section 23, township 38

north, range 5 east; it is all in township 38 north, range 5 east, made on the same day.

John J. Skuse, assignee of John A. Stevens, west half of southeast quarter of section 23, township 38 north, range 5 east.

John J. Skuse, assignee of Elma A. Culver, northwest quarter of northeast quarter, northeast quarter of northwest quarter, section 29. I will omit the township and range hereafter.

John J. Skuse, attorney for Hiram F. Hamilton, northwest quarter of southeast quarter, northwest quarter of southwest quarter, section 13; southwest quarter and northwest quarter, southwest quarter northwest quarter section 23.

John J. Skuse, attorney of Mary J. O'Neill, widow, west half of northwest quarter, southeast quarter of northwest quarter of section 28.

The following entry is by John J. Skuse and has no notation of the assignee; undoubtedly there was an assignee there, but it is not noted. For the northwest quarter of the northeast quarter, southwest quarter of the southeast quarter of section 13.

Skuse, attorney for John F. Campbell, southwest quarter of northeast [3150—2820] quarter of section 26. Skuse, assignee of Ezra A. Scott, north half of the northeast quarter of section 27. That completes it.

It is also stipulated that the township plat of township 38 north, range 5 east, of the United States Land Office of Lewiston, Idaho, shows the partial disposition made of the following lands:

That the northwest quarter of the southwest quarter of section 13 is marked Cash Entry 4767, and based on T. & S. filing 1319.

That the west half of the southeast quarter is covered by Cash Entry 4774, based upon timber and stone filing 1325.

That the northwest quarter of the northeast quarter of section 13 is covered by the same.

That the southwest quarter of the northeast quarter of section 23 is covered by Cash Entry 4776, based upon timber and stone filing 1326.

That the southeast quarter of the northeast quarter of section 23 is covered by the same.

That the west half of the southeast quarter of section 23 is covered by Cash Entry 4764, based upon timber and stone filing 1313.

That the east half of the southwest quarter of section 23 is covered by the same.

That the northwest quarter of the northeast quarter of section 26 is covered by Cash Entry 5029, based upon timber and stone filing 1554.

That the north half of the northeast quarter of section 27 is covered by Cash Entry No. 4858, based upon timber and stone filing 1454.

That the east half of the northwest quarter of section 27 is not embraced in one entry. The northeast quarter of the northwest quarter of section 27 is covered by Cash Entry 4485, based upon timber and stone filing 1454; and the southeast quarter of the northwest quarter of section 27 is embraced in the State Selection List No. 6.



That the west half of the northeast quarter of section 28 is covered by two entries; the northwest quarter of the northeast quarter of section 28 is covered by or embraced in Cash Entry 5294, based upon timber and stone filing 1737; and the southwest quarter of the northeast [3151—2821] quarter of section 28 is embraced in List No. 6 of State Selections, Scientific Schools; that the southeast quarter of the northwest quarter of section 28 was covered by state selection.

Section 29, covered by state selection.

That the northwest quarter of the southeast quarter of section 29 and the northeast quarter of the northwest quarter of the same section, was covered by state selection.

Mr. GORDON.—It is stipulated that the following is the cross-examination of the witness, and that the same shall go in as part of the above stipulation:

Mr. TANNAHILL.—Yes.

“Cross-examination by Mr. RUICK.

“Q. Mr. Bartlett, will you turn to that map in the rear of you and take the pointer and point out where these are?

“A. What would you like to have pointed out?

“Q. Those lands that you have just read to Mr. Moore.

“Mr. MOORE.—He has got to have some kind of a list.

“Q. I am asking a question, don't get there so that the jury cannot see. Mr. Bartlett, if you will stand back farther I am going to call your attention to it

so you will have no trouble at all in finding them. Point out the entry of Jackson O'Keefe, in section 23, 38-5? A. There is 23.

"Q. That is 39-5. Point out the entry of Jackson O'Keefe, the northwest quarter of section 23?

"A. I point out the northwest quarter of 23. I don't know anything about Jackson O'Keefe.

"Q. Well, point out the northwest quarter of 23, and tell us how it is marked there on the map?

"A. The northwest quarter of 23?

"Q. Yes, I want you to identify it?

"A. That is the middle of 23, if this map is constructed right, I suppose. Here is the northwest quarter of 23 (indicating). [3152—2822]

"Q. How is it marked?

"A. Part of it is marked W. H. Kincaid, and part of it is marked E. White on this map.

"Q. I see I didn't give you the correct description. It is my mistake. Point out the west half of the southeast quarter and the east half of the southwest quarter.

"A. Yes, sir; there it is, marked J. O'Keefe.

"Q. Now, point out there lots 1 and 2 and the east half of the northwest quarter of 30, find section 30-38-6? A. Yes, sir.

"Q. Lots 1 and 2 and the east half of the northwest quarter, who is that marked to there?

"A. Taylor—C. Taylor.

"Q. Now, section 18-38-6, lots 1 and 2 and the east half northwest quarter, section 18?

"A. J. H. Prentiss.

“Q. Section 18 again, 38-6, lots 3 and 4 and east half southwest quarter? A. E. J. Taylor.

“Q. Section 19, same township and range, the northeast quarter section 19, Dammarell, is it?

A. Yes, sir; E. Dammarell.

“Q. Now section 30, township 39-5. Now, I will read north half northwest quarter section 30 and southwest quarter southeast quarter, and the southeast quarter of the southwest quarter section 19, in that township?

“A. Southwest southwest is not comprised on one entry. Not in the same entry. If you please, I will read it as the map indicates here. This is the north half of the northeast quarter of 30, the southwest of the northeast of 19, and the southeast of the northeast of 19.

“Q. Mr. Bartlett, you can find your chair there. I understand then, Mr. Bartlett, as shown from the record that this tender of scrip [3153—2823] was rejected on the same day that it was tendered?

“A. It was.

“Q. And I also note, I think that some of the land on which this scrip was tendered was entered by the State under its preference right. In other words you called off to me some?

“A. Yes, if the calling off of Mr. Moore answered the description of the rejected scrip. Some of it was selected by the State.

“Q. Under its preference right? A. Yes.

“Q. Have you anything there showing the date of this State selection that you refer to there?

“A. No, sir.

“Q. You have already given the date of the State selections, I believe?     A. I believe I have.

“Q. That is April 21st?

“A. It is in the testimony.

“Q. Mr. Bartlett, I would like to ask you one more question as to the rules and regulations, the tender of this scrip. Does it or does it not segregate the lands so as to prevent other entries being made?

“A. No, being rejected.

“Witness excused.”

A recess was thereupon taken until two o'clock P. M. [3154—2824]

At two o'clock P. M. the hearing was resumed.

**[Testimony of Frank W. Kettenbach, for  
Defendants.]**

FRANK W. KETTENBACH, a witness called in behalf of the defendants, being first duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. BABB.)

Q. State your name, age, residence and occupation.

A. Frank W. Kettenbach; 49; Lewiston, Idaho; banker.

Q. What has been your connection, if any, with the Idaho Trust Company, and during what period of time?

A. I have been President since its organization.

Q. And what, if any, has been your connection with the Lewiston National Bank, and for what periods, approximately?

(Testimony of Frank W. Kettenbach.)

A. I was President of the Lewiston National Bank from July, 1907, until January, 1910.

Q. And how many years had it been since July, 1907, before you had any connection with the bank?

A. Prior to the time I was elected President in 1907 I had no connection in an official capacity with the Lewiston National Bank since about—it is about 1896.

Q. I will ask you to state any and all indebtedness, if any (you can describe it, stating the amount and what it consisted of), that was owing from William F. Kettenbach and George H. Kester, or either of them, at the time of the execution by them of their deed on July 6th, 1907, to the Idaho Trust Company, and the instrument of July 23d, 1907, declaring a trust, on which said deed was made; also, any and all indebtedness, if any, that was created from William F. Kettenbach and [3155—2825] George H. Kester, or either of them, simultaneously with the execution of either of those instruments; also, all indebtedness that has been created since then from William F. Kettenbach and George H. Kester, or either of them, either to the Idaho Trust Company or the Lewiston National Bank; giving in your statement an account of the renewals, if any, that have been made of that indebtedness from time to time, the payments made, assignments or transfers, and by whom it is at present held and owned, and the amount now due upon it?

Mr. GORDON.—Objected to as leading, and assuming a number of facts not proved.



(Testimony of Frank W. Kettenbach.)

WITNESS.—At the time of the execution of that trust agreement I loaned George H. Kester from the Idaho Trust Company \$20,000.00 in addition to \$5,000.00 that he then owed the Idaho Trust Company, and took his note for \$25,000.00. I also took his note for \$20,000.00 in favor of the Lewiston National Bank, the most of which amount was for prior indebtedness. The total amount of \$45,000.00 was credited in Kester's account at the Lewiston National Bank, and then he gave checks for the prior indebtedness in the shape of notes that he owed, were charged up to that account. At or about, or about January 1st, 1910, the renewal of the note of that \$20,000.00 in favor of the Lewiston National Bank was assigned to the Idaho Trust Company. Several times these two notes have been renewed, and the interest has been added to the principal, and sometimes the amount was segregated into two notes for \$20,000.00 each, and the further note of something like \$10,000.00, and the whole amount of that due the Idaho Trust Company now is shown by a note in favor of the Idaho Trust Company dated September 30th, 1910, for \$51,937.12.

Mr. GORDON.—Fifty-one thousand and what?

WITNESS.—\$51,937.12.

Mr. BABB.—Signed by?

A. Signed by George H. Kester. This is another subject now: At the time of taking this trust agreement, Naylor & Norlin Company, [3156—2826] Limited, a corporation, of which George H. Kester was the principal stockholder, owed the Lewiston

(Testimony of Frank W. Kettenbach.)

National Bank an overdraft of something over \$30,000.00. I looked at the book, and on July 9th it was \$30,806.42.

Q. July 9th, when?

A. 1907. This was an overdraft, and I purchased stock in the Lewiston National Bank about that time, and before I purchased that Mr. George H. Kester told me that he would guarantee the indebtedness of Naylor & Norlin Company personally, and this indebtedness, therefore, being guaranteed by Mr. Kester, was included in this instrument.

Q. What instrument?

A. In this instrument of trust from Kester and Will Kettenbach to the Idaho Trust Company. A short time afterwards the balance of this overdraft, after some payments had been made, was embraced in a note or notes signed by Naylor & Norlin Company, and endorsed by George H. Kester.

Q. Endorsed or guaranteed?

A. Endorsed and—

Mr. GORDON.—I object to that as suggesting the answer of the witness.

WITNESS.—Endorsed and guaranteed by George H. Kester. While this indebtedness exceeded \$20,000.00, the Lewiston National Bank carried part of it.

Mr. BABB.—Q. What indebtedness?

A. While this indebtedness of Naylor & Norlin Company, while it exceeded \$20,000.00, a part of it was carried by the Lewiston National Bank, and a part of it was loaned by the Idaho Trust Company.

(Testimony of Frank W. Kettenbach.)

This indebtedness was paid from time to time down to \$8,000.00.

Q. Which indebtedness—of Naylor & Norlin?

A. This indebtedness of Naylor & Norlin was paid off down to an [3157—2827] amount of \$8,000.00, which note of \$8,000.00 was represented by a note in favor of the Lewiston National Bank. This note of \$8,000.00 was assigned by the Lewiston National Bank to the Idaho Trust Company.

Q. Whose note? Who were the makers of that note to the Lewiston National Bank?

A. Well, I will finish this sentence. This note was assigned to the Lewiston National Bank about January 1st, 1910. The note was signed by Naylor & Norlin Company, and endorsed and guaranteed by George H. Kester. This assigned note was subsequently renewed in favor of the Idaho Trust Company, and the amount is still owing to the Idaho Trust Company, and is now represented by one note for \$8,000.00, dated December 30th, 1909, signed by Naylor & Norlin Company, Limited, by George H. Kester, President, and E. P. Kester, Secretary, and guaranteed by George H. Kester. I will say that while the Lewiston National Bank note was assigned about January 1st, that the Naylor & Norlin Company paid the interest on that note to December 30th, and when I took a renewal of the note in favor of the Idaho Trust Company, I dated it December 30th, 1909. The name of the Company is "Naylor & Norlin Co., Ltd."

Mr. GORDON.—Let me ask you a question. You

(Testimony of Frank W. Kettenbach.)

said the note was dated January something, or paid January 1st, and it was dated December 30th. That means just a day between them, does it?

A. Just a day between them.

Q. You didn't give the day of the year, that was all. That was January 1st, 1910?

A. The old note was assigned by the Lewiston National Bank to the Idaho Trust Company January 1st, 1910, and the renewal note was taken and dated December 30th, 1909.

Mr. GORDON.—Yes—I just wanted to get the year.

Mr. BABB.—Q. Before leaving that, you may clear up how much is unpaid on [3158—2828] those notes—the Kester note.

A. I stated that in the last sentence. I stated that it was now represented by a note to the bank of five thousand and some odd dollars, and this Naylor & Norlin's was \$8,000.00.

Q. I don't remember that you stated that any payment was made.

A. I will state the amount now due to the Idaho Trust Company under this guarantee of Kester's, or under this trust agreement of Kester's, is the amount of—I will get the note.

Q. You had better state that in form, if any payments have been made on the notes; if so, they will be on the back. A. Well—erase that?

Q. Yes.

Mr. GORDON.—Well, I object to his changing the questions.

(Testimony of Frank W. Kettenbach.)

WITNESS.—All right. The amount of indebtedness under that trust agreement from Kester is now—is the amount of the \$8,000.00 note mentioned, dated December 30th, 1909, with interest paid to September 30th, 1910, and bearing interest at the rate of eight per cent since September 30th, 1910; and also the amount of the note for \$51,937.12, with interest at the rate of ten per cent per annum from September 30th, 1910. There has no amount been paid on that. At the time of executing that instrument of trust, William F. Kettenbach, I think, paid up all of his indebtedness to the Lewiston National Bank.

Mr. GORDON.—Now, may I ask if the witness is testifying from his memory, or from a memorandum?

WITNESS.—I am testifying partly from memory, but also from memoranda made up from the books of the Lewiston National Bank and the Idaho Trust Company, which I have verified.

Mr. GORDON.—Objected to, on the ground that it is not the best evidence. The books and records of the bank would be the best evidence. [3159—2829]

Mr. BABB.—Q. Have you got the books here?

A. I have the books here. I can verify it.

Q. Well, go ahead and detail it, and we will check it up afterwards.

A. William F. Kettenbach borrowed from the Idaho Trust Company on March 9th, 1909, \$3,000.00; March 15th, 1909, \$7,000.00; March 29th, 1909, \$2,000.00; March 15th, 1909, \$200.00; May 13th, 1909,



(Testimony of Frank W. Kettenbach.)

\$16,109.25, and October 13th, 1909, \$4,579.00. And he borrowed from the Lewiston National Bank, December 7th, 1907, \$1,000.00; December 30th, 1907, \$4,000.00; February 28th, 1908, \$1,000.00; February 28th, 1908, \$12,791.65; April 2d, 1908, \$1,208.35; May 5th, 1908, \$1,000.00; June 30th, 1908, \$4,000.00; October 5th, 1908, \$400.00; October 8th, 1908, \$15,000.00; December 26th, 1908, \$8,000.00, January 27th, 1908, \$3,000.00; March 9th, 1909, \$18,000.00; March 9th, 1909, \$2,000.00; March 15th, 1909, \$200.00; June 17th, 1909, \$5,000.00; June 17th, 1909, \$5,000.00; July 16th, 1909, \$2,000.00; September 21st, 1909, \$10,000.00; and November 27th, 1909, \$2,000.00. A good many of these amounts that I have given you are new notes that he gave in renewal of some of the earlier dates, and the indebtedness is all paid to the Idaho Trust Company except one note for a balance of \$8,186.05, and interest from February 5th, 1910.

Q. What is the date of it, and who is it signed by, and payable to who?

A. Well, the date of this note is February 5th, 1910, and signed by W. F. Kettenbach.

Q. Payable to who?

A. Payable to the Idaho Trust Company. I don't know whether there is any indebtedness to the Lewiston National Bank now or not. I am not in that.  
[3160—2830]

Q. What is the principal amount named in the note you referred to?

A. The principal amount named in the note is \$9,544.71, and it is endorsed with a payment Febru-

(Testimony of Frank W. Kettenbach.)

ary 7th, 1910, of \$225.00, and a payment on July 10th, of \$1,133.66, leaving the amount of the balance which I gave above.

Q. Eight thousand and what?

A. \$8,186.05, and the interest.

Q. Have you now given the account of all the indebtedness of William F. Kettenbach and George H. Kester, or either of them, to the Idaho Trust Company or the Lewiston National Bank, existing on the 6th of July, 1907, and the 23d of July, 1907, created on either of those dates, or on or about either of those dates, or created since then?

A. Yes; I have given the amount of the indebtedness, and given the dates when it was incurred.

Mr. GORDON.—Objected to as leading and suggestive.

Mr. BABB.—Q. I will ask you to state what became of the notes which are mentioned in detail in this indebtedness as having been renewed from time to time, either to the Idaho Trust Company or the Lewiston National Bank?

A. When any of these notes were paid or renewed I would return the cancelled notes to the makers—to Kester or Kettenbach as the case may be; and I will say now that I haven't followed in detail all of the renewals.

Q. Have you a list of those renewals?

A. I have a list of all of the notes given by Kester and Kettenbach to the two institutions during that period from the time of that trust instrument, from the date of it.

(Testimony of Frank W. Kettenbach.)

Q. Where is it?

A. I have here a list of the indebtedness of William F. Kettenbach [3161—2831] to the Idaho Trust Company.

Q. Does it give a statement there of the renewals of the notes from time to time?

A. This list gives the amount, the date, and date of payment of all of the notes that Will Kettenbach gave to the Idaho Trust Company.

Q. When it states payment there, does that mean that it was wiped out, or renewed?

A. Where it shows paid, that means that it was either paid or renewed.

Q. Not necessarily paid and wiped out?

A. No, not necessarily.

Q. All right. Proceed with the rest of them there.

A. Here is a list of the notes signed by W. F. Kettenbach and George H. Kester for \$3,000.00.

Q. Payable to what?

A. Payable to the Idaho Trust Company.

Q. That is not a list—this is just one of them?

A. Just one, yes. I think that was paid. Here is a list of the notes of George H. Kester and Naylor & Norlin to the Idaho Trust Company, down to the notes given June 30th, 1910, which were renewed since this list was given—renewed, I might say, without the addition of anything, but including the interest in the face of the note. I will state this list shows the notes for \$20,000.00 each, and one note for \$10,865.50. These three notes have been included in the renewal of the note for \$51,937.12.

(Testimony of Frank W. Kettenbach.)

Q. What date is that last note?

A. Dated September 20th, 1910. Do you want the list of the Lewiston National Bank?

Q. Have you finished all of the Idaho Trust Company?

A. Well, this is William Dwyer. Do you want that?

Q. Well, no; we will keep them separate. You may furnish a [3162—2832] statement also of the renewals that have been made of the indebtedness described here to the Lewiston National Bank.

Mr. BABB.—I offer in evidence the lists of renewals of notes which the witness has just referred to, they being written in indelible pencil on three separate sheets, each of which is entitled at the top: "PLEASE EXAMINE AND REPORT WITHOUT DELAY." It also contains at the top, in print: "In account with IDAHO TRUST COMPANY."

Mr. GORDON.—We object to the admission of the documents in evidence. Neither the man that made them has testified to their accuracy nor are the records themselves introduced in court.

Said sheets were thereupon marked by the Reporter as Defendants' Exhibit W-1, X-1, and Y-1.

Mr. BABB.—I offer next in evidence the following notes that were produced and referred to by the witness while he has been testifying, to wit:

The note of George H. Kester for the principal sum of \$51,937.12, dated September 30th, 1910, payable on demand to the order of the Idaho Trust Company, with interest, etc.

(Testimony of Frank W. Kettenbach.)

The note of Naylor & Norlin Co., Ltd., for the principal sum of \$8,000.00, dated December 30th, 1909, payable on demand to the order of the Idaho Trust Company, with interest, etc. Also, the guarantee of George H. Kester on the back of that note.

The note of W. F. Kettenbach for the principal sum of \$9,544.71, dated February 5th, 1910, payable on demand to the order of the Idaho Trust Company, with interest, etc.

Said notes were thereupon marked by the Reporter as Defendants' Exhibits Z-1, B-2, and C-2.

Mr. BABB.—Q. Now, proceed and give a list of the renewals of indebtedness of Kester and Kettenbach which you have testified to, to the Lewiston National Bank, if you have such a list. [3163—2833]

A. This list of notes shows the notes of William F. Kettenbach for money borrowed from the Lewiston National Bank during that time, and showing unpaid a note of \$10,000.00 and one for \$2,000.00 at the time I went out of the Lewiston National Bank.

Q. What date?

A. The notes were dated September 21st and November 27th, 1909, respectively, and were not yet paid when I went out of the bank on January 1st, 1910, as near as I can remember.

Q. What were these lists made up from?

A. They were made up from the books of the Lewiston National Bank Bills Receivable Register.

Q. By whom were they made?

A. They were made by Joe Richards, and verified by me.



(Testimony of Frank W. Kettenbach.)

Mr. BABB.—I offer those two lists.

WITNESS.—That is just one list—of William F. Kettenbach.

Mr. BABB.—I offer the list, the same being on two separate pages, the first being marked at the top “#1, Wm. F. Kettenbach,” and the second being marked at the top “#2, Wm. F. Kettenbach.”

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

Said sheets were thereupon marked by the Reporter as Defendants' Exhibit D-2.

WITNESS.—This now is a list of the notes of George H. Kester and the indebtedness of Naylor & Norlin to the Lewiston National Bank, which list shows all paid except a note of Naylor & Norlin for \$8,000.00 dated December 30th, 1908, and a note of George H. Kester for \$20,000.00 dated September 30th, 1909. I will say these two notes were assigned January 1st to the Idaho Trust Company, as I have testified before, and they are paid so far as the Lewiston National Bank is concerned now. That is, the Lewiston National Bank has its money, but the Idaho Trust Company owns the renewal of those notes, and the amount is not yet paid. [3164—2834]

Mr. BABB.—I offer this last mentioned list referred to by the witness as being on two pages, the first marked “#1” at the top, with the name of George H. Kester, and the second being marked “#2, George H. Kester.”

Mr. GORDON.—Objected to as incompetent, irrelevant and immaterial.

(Testimony of Frank W. Kettenbach.)

Said sheets were thereupon marked by the Reporter as Defendants' Exhibit E-2.

Mr. BABB.—Q. Where was the information secured from which this list was made?

A. This information was secured from the Bills Receivable Register of the Lewiston National Bank, by Joe Richards, and verified by myself.

Q. Has that register a column—that register is a printed form—a book—is it? A. Yes.

Q. Columns, with the printed headings at the top of them? A. Yes, sir.

Q. One of those headings is "Date Paid," in print, isn't it? A. It is headed "When Paid."

Q. "When Paid"? A. Yes.

Q. What is the practice in making entries under the column "When Paid," where the notes are renewed?

A. Well, whenever a note is renewed it is cancelled and marked paid on the register.

Q. Just the same as if it had been paid in fact?

A. Yes.

Q. I will ask you what these lists, Defendants' Exhibits W-1, X-1, and Y-1,—I will ask you where the information was secured from which [3165—2835] those exhibits were made up?

A. It was secured from the Loan Register of the Idaho Trust Company.

Q. I will ask you to state any and all indebtedness, if any, of William Dwyer and Kittie E. Dwyer, his wife, or either of them, that was existing either in favor of the Idaho Trust Company or the Lewiston

(Testimony of Frank W. Kettenbach.)

National Bank on the 31st day of December, 1908; also any and all indebtedness, if any, that might have been created from either of those parties to either the Idaho Trust Company or the Lewiston National Bank, on that date, or on or about that date; also all indebtedness, if any, that has been created from them or either of them, to either the Idaho Trust Company or the Lewiston National Bank, from that time to this date, giving the renewals of any such indebtedness that have been made from time to time, the transfers and assignments thereof, and stating by whom such indebtedness is now held or owned, and how much is due or unpaid thereon.

Mr. GORDON.—Objected to on the ground that it is leading and suggestive, and the question contains a statement by counsel of what purports to be a fact not in evidence.

Mr. BABB.—I will add to that: And stating in each instance the nature of the indebtedness, and what it consisted of.

A. This trust instrument was given about the 31st day of December, 1908. The indebtedness of William Dwyer to the Lewiston National Bank at the time of the execution of that instrument was \$14,056.00. On October 13th, 1909, we advanced—

Q. Who is this now—the Lewiston National Bank?

A. The Lewiston National Bank advanced \$3,450.00—wait a minute,—

Q. Who was that fourteen thousand owing to? To the Lewiston National Bank or the Idaho Trust Company?

(Testimony of Frank W. Kettenbach.)

A. That went to the Lewiston National Bank. Now, on October [3166—2836] 13th, 1909, some additional money was advanced, and renewal notes were taken, one for \$15,000.00 in favor of the Idaho Trust Company, and the Idaho Trust Company advanced that money, or paid it over to the Lewiston National Bank, and a note for \$3,450.00 was taken in favor of the Lewiston National Bank. On January 1st, 1910, this note for \$3,450.00 was assigned to the Idaho Trust Company by the Lewiston National Bank, and on April 13th, 1910, the notes were renewed, and William Dwyer and Kittie E. Dwyer signed a new note, dated April 13th, 1910, for \$19,683.50.

Mr. GORDON.—Who was that to?

A. That is to the Idaho Trust Company, and that is unpaid, and we now hold that note. On April 25th, 1910, the Idaho Trust Company loaned them \$480.00, as shown by a note signed by William Dwyer. Kittie Dwyer was to sign that, but I think we overlooked getting her signature on it. I don't think these notes in renewal include any additional advances, other than taxes and assessments and other advances that were necessary to protect the property conveyed in the trust deed. Both of these notes are now due and owing to the Idaho Trust Company. Did you want anything about the indebtedness prior to the mortgages? You see, the Lewiston National Bank had a mortgage,—

Mr. BABB.—I will ask you separately about that.

Mr. BABB.—I now offer in evidence the note of

(Testimony of Frank W. Kettenbach.)

William Dwyer and Kittie E. Dwyer, for the principal sum of \$19,683.50, dated April 13th, 1910, payable to the order of the Idaho Trust Company, with interest, etc. Also, a note of William Dwyer for \$480.00, dated April 25th, 1910, payable to the order of the Idaho Trust Company, with interest, etc.

Said notes were thereupon marked by the Reporter as Defendants' Exhibits F-2 and G-2.

MR. BABB.—Q. Have you now finished the statement of the indebtedness of [3167—2837] Kittie E. Dwyer and her husband, or either of them, both to the Lewiston National Bank and the Idaho Trust Company, from the 31st of December, 1908, or a period on or about that date, and from that date down to the present, or created on or about that date.

A. Yes.

Q. I will ask you to state what, if any, portion of that indebtedness was ever secured by a mortgage to the Lewiston National Bank; and by mortgage I mean some instrument additional to that trust agreement dated December 31st, 1908.

A. At the time that I took this trust agreement from Dwyer and his wife the Lewiston National Bank already had a mortgage on I think about 800 acres of the land mentioned in that trust agreement; at any rate, a good part of the land; securing an indebtedness to the Lewiston National Bank consisting of one note for \$7,100.00, dated June 29th, 1905, and one note for \$1,000.00, dated January 18th, 1907, and one note for \$1,000.00, dated April 23d,



(Testimony of Frank W. Kettenbach.)

1903. I am giving this from memory, but I think it is right. That is a total indebtedness of \$12,100.00.

Mr. BABB.—I want to offer that mortgage from this abstract of title.

Mr. GORDON.—Does it show where it was recorded?

Mr. BABB.—Yes.

Mr. GORDON.—All right.

Mr. BABB.—It is agreed and stipulated that a mortgage was executed by Kittie E. Dwyer and William Dwyer to the Lewiston National Bank, and duly acknowledged and recorded, of which the following is a correct abstract:

Book 85, of Mortgage, page 10.

Kittie E. Dwyer and William Dwyer to the Lewiston National Bank.

Consideration, \$12,100.00.

Dated July 8th, 1907. [3168—2838]

Recorded July 10th, 1907, in the Recorder's office of Nez Perce County, Idaho, at 12-15 P. M.

To secure the payment of \$12,100.00, according to three principal notes as follows: No. 14,904, June 29th, 1905, \$7,100.00; No. 15,942, January 18th, 1907, \$4,000.00; No. 16,102, April 23d, 1907, \$1,000.00.

Signed: KITTIE E. DWYER. (Seal)

WILLIAM DWYER. (Seal)

Witness, FRANK E. BROWN.

Description: Situated in Nez Perce County, State of Idaho, to wit: NE.¼ of SE.¼ of Section 15, Township 38 North, Range 5 East, B. M.; SE.¼ of Section 21, Township 38 North, Range 5 East, B.

(Testimony of Frank W. Kettenbach.)

M.; N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of Section 15, Township 38 North, Range 6 East, B. M.; SW.  $\frac{1}{4}$  of Section 20, Township 38 North, Range 6 East, B. M.; SE.  $\frac{1}{4}$  of Section 30, Township 38 North, Range 6 East, B. M.; containing 800 acres.

Acknowledgment: Duly acknowledged July 8th, 1907, before Frank E. Brown, a Notary Public, County of Asotin, State of Washington. (Seal)

Marginal readings: I hereby acknowledge full payment and satisfaction of the within mortgage.

LEWISTON NATIONAL BANK,  
By FRANK W. KETTENBACH,

President.

Signed and acknowledged before me this 31st day of December, 1907.

W. L. GIFFORD,

Recorder,

By R. L. Thompson,

Deputy.

Mr. BABB.—Now, after that there is another mortgage from the same parties to the Lewiston National Bank.

Mr. GORDON.—All right.

Mr. BABB.—It is further stipulated that a mortgage, of which the following is a correct abstract, was duly executed by William Dwyer and Kittie E. Dwyer to the Lewiston National Bank, to wit:  
[3169—2839]

Book 83, of Mortgages, page 96.

William Dwyer and Kittie E. Dwyer, his wife, to the Lewiston National Bank.

Mortgage.

(Testimony of Frank W. Kettenbach.)

Consideration, \$12,900.00.

Dated December 30th, 1907.

Recorded in the office of the Recorder of Nez Perce County, Idaho, December 31st, 1907, at 1-30 P. M.

To secure the payment of \$12,900.00, according to one promissory note for \$7,100.00, dated June 29th, 1905, bearing interest at the rate of 10 per cent. per annum from date until paid, and with interest paid to December 29th, 1907; one promissory note for \$5,800.00, bearing interest at ten per cent. per annum from date, and bearing even date herewith.

Signed: WILLIAM DWYER. (Seal)

KITTIE E. DWYER. (Seal)

Witness: FRANK E. BROWN.

Description: Situate in Nez Perce County, State of Idaho, to wit: The E. $\frac{1}{2}$  of SW. $\frac{1}{4}$  and the W. $\frac{1}{2}$  of SE. $\frac{1}{4}$  of Section 20, and the SE. $\frac{1}{4}$  of Section 21, in Township 39 North, of Range 5 East, of Boise Meridian; the SW. $\frac{1}{4}$  of Section 20, the SE. $\frac{1}{4}$  of Section 30, N.  $\frac{1}{2}$  of SW.  $\frac{1}{4}$  and the N.  $\frac{1}{2}$  of SE.  $\frac{1}{4}$  of Section 15, in Township 38 North, of Range 6 East, of Boise Meridian; and the SE.  $\frac{1}{4}$  of NW.  $\frac{1}{4}$ , the S. $\frac{1}{2}$  of NE. $\frac{1}{4}$  and the NE. $\frac{1}{4}$  of SE. $\frac{1}{4}$  of Section 15, in Township 38 North, of Range 5 East, of Boise Meridian; containing in all 960 acres.

Acknowledgment: Duly acknowledged December 31st, 1907, before

(Seal)

FRANK E. BROWN,

A Notary Public, County of Asotin, State of Washington.

Mr. BABB.—Q. I notice you stated that at the

(Testimony of Frank W. Kettenbach.)

time of the execution of the instrument of December 31st, 1908, when the deed was made by William [3170—2840] Dwyer and wife to the Idaho Trust Company there was a mortgage to the Lewiston National Bank for several notes which aggregated \$12,-100.00?

A. What was that? At the time of the execution of the trust—

Q. I will ask you to state whether the mortgage which was in existence at that time from Dwyer and wife to the bank wasn't a mortgage securing notes aggregating \$12,900.00, instead of \$12,100.00?

Mr. GORDON.—Objected to as leading and suggestive.

Mr. BABB.—Q. I will ask you if the former mortgage hadn't previously been released? You can look at that abstract, Mr. Kettenbach. (Handing abstract to witness, who examined the same.)

A. Well, I think I had in mind the mortgage given July 8th, 1907, which was for \$12,100.00, and secured the notes that I described there. Then later on the mortgage for \$12,900.00 was taken in renewal of the morgage, and the additional \$800.00 was the interest. I think, and additional land was given as security.

Mr. BABB.—I offer in evidence the deed from William Dwyer and wife to the Idaho Trust Company, dated December 31st, 1908, being the deed referred to in the instrument of trust dated December 31st, 1908, and executed by William Dwyer and wife to the Idaho Trust Company. I also offer the certificate of recording on the bank of the deed.

(Testimony of Frank W. Kettenbach.)

Said deed was thereupon marked by the Reporter as Defendants' Exhibit H-2.

Mr. BABB.—Q. You may state whether you have a list of renewals of this indebtedness you have given an account of,—this indebtedness of William Dwyer and Kittie E. Dwyer that you have given an account of—renewals made by them to the Idaho Trust Company or the Lewiston National Bank?

A. I have such a list here. In addition to the remarks about the former lists, about the paid column, I want to say that when the Lewiston National Bank made an assignment of one of these notes, or any [3171—2841] of them, to the Idaho Trust Company, and thus got its money, that the Bills Receivable Register showed that it was paid, in the "Paid" column, so far as the Lewiston National Bank was concerned; but that doesn't mean that the note was paid. I have reference to the note for \$7.-100.00 which was assigned to the Idaho Trust Company September 28th, 1908, and the same note therefore appears in the list of notes due to the Idaho Trust Company; and the note of \$5,800.00 was assigned to the Idaho Trust Company on October 29th, 1908.

Q. Assigned by whom?

A. Assigned by the Lewiston National Bank to the Idaho Trust Company; and therefore shows in both the notes to the Lewiston National Bank and the list to the Idaho Trust Company. The Lewiston National Bank list shows the note for \$3,450.00 still unpaid; but it was assigned to the Idaho Trust Com-



(Testimony of Frank W. Kettenbach.)

pany on January 1st, 1910, and was included in the subsequent renewal.

Q. What were these lists which you have just referred to made up from?

A. Made up from the Bills Receivable Register of the Lewiston National Bank. That is one of the Lewiston National Bank notes, and the other one was made up from the Loan Register of the Idaho Trust Company.

Q. Who made these up?

A. Joe Richards, and I verified them.

Mr. BABB.—I offer these in evidence. They are on separate sheets of paper, which sheets are endorsed on the bank, respectively, as follows: One of them, “Wm. Dwyer to Idaho Trust Co. July 9, 1907, to Date. Nov. 30, 1909.” And the other is endorsed on the back: “Wm. Dwyer Notes to Lew. Nat. Bank July 9, 1907, to Date Nov. 30, 1909.”

Mr. GORDON.—I object to the list showing the notes and renewals and the notes to the Idaho Trust Company, on the ground that it is a mere memorandum—a copy—and the person who it is stated made out [3172—2842] the same has not testified to the accuracy of them, and the books and records which they purport to be a memorandum of are the best evidence, and they are not produced in court.

Said lists were thereupon marked by the Reporter as Defendants’ Exhibits I-2 and J-2.

Mr. BABB.—I offer now a quitclaim deed from Elizabeth White to the Lewiston National Bank, dated the 25th of October, 1907, and recorded in the

(Testimony of Frank W. Kettenbach.)

Recorder's office of Nez Perce County, Idaho, October 28th, 1907, and a quitclaim deed from Clarence W. Robnett and wife to the Lewiston National Bank, of the same date, and recorded the same date in the same Recorder's office.

Mr. GORDON.—We waive any further identification of the documents.

Said deeds were thereupon marked by the Reporter as Defendants' Exhibits K-2 and L-2.

Mr. BABB.—Q. I ask the witness to state if he knows what the consideration for the transfers to the Lewiston National Bank evidenced by these two deeds was?

A. The consideration was \$2,400.00, paid to Clarence W. Robnett, or, rather, paid into—credited up to Clarence Robnett upon his indebtedness to the Lewiston National Bank.